United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 75-4235

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 75-4235

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent.

B

B/S

No. 75-4269

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

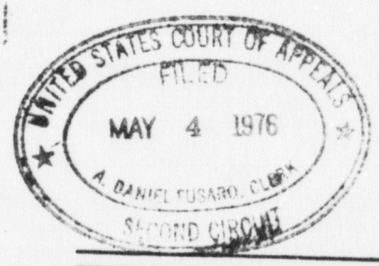
v.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX



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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

LOCAL 3 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO Respondent	
and	Case No.
WICKHAM CONTRACTING CO. AND RALPH PERONE JOINT VENTURES	29-CC-410
EUGENE IOVINE, INC.	29-CC-408
BOARD OF EDUCATION OF THE CITY OF NEW YORK	29-CC-414
Charging Parties	

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New York, for Intervener Local 363,
International Brotherhood of Teamsters, Warehousemen, Chauffeurs and Helpers of America.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of Local 3, Int'l Bro. of Electrical Workers, AFL-CIO

Case Nos.: 29-CC-410, 29-CC-408 and 29-CC-414

7.23.74	Charge filed in 29-CC-410 (formerly 2-CC-1333)
7.29.74	Charge filed in 29-CC-408
8.29.74	Charge filed in 29-CC-414
9. 6.74	Order Consolidating Cases, Complaint, and Notice of Hearing, dated.
9.13.74	Charging Parties' request that hearing be postponed, dated
9.18.74	Order Rescheduling Hearing, dated
10.10.74	Respondent's Answer to the complaint, received
10.11.74	[illegible]er Rescheduling Hearing, dated
10.24.74	H[illegible]ing opened
10.25.74	Hearing closed
3. 7.75	Administrative Law Judge's Decision issued
4.14.75	Respondent's Exceptions, received
9.26.75	Decision and Order issued by the National Labor Relations Board

[Dated 3/7/75] [JD-106-75
Brooklyn, New York]

* * * * *

DECISION

HERZEL H.E. PLAINE, Administrative Law Judge:

The question presented in this consolidated proceeding is whether the Respondent Union (Local 3 IBEW or Local 3) violated the secondary boycott provisions, Section 8(b)(4)(i) and (ii)(B), of the National Labor Relations Act (the Act), in the period July - September 1974.

The consolidated complaint, filed September 6, 1974,[1/] alleges that Local 3 IBEW, whose members comprise the bulk of the electricians working for the New York electrical contractors doing work for the Board of Education (and for others) in New York City, caused the Local 3 electricians to walk off and stay away from the jobs of their employers at over one hundred Board of Education school sites, commencing in early July 1974, causing other contractor-employers and their employees in other trades to cease work at the school sites; and that an object of the work stoppage or strike was to force or require the electrical contractors employing the Local 3 members to cease doing business with the Board of Education, to force or require the Board of Education to cease doing business with electrical contractors Wickham and Perone, Iovine, and certain other employers of electricians not represented by Local 3. Prior to the strike Wickham and Perone and Iovine had successfully bid for, and were performing, electrical work

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1/ On charge by Wickham Contracting Co. and Ralph Perone Joint Ventures (Wickham and Perone) in No. 410, filed July 23, 1974; on a charge by Eugene Iovine, Inc. (Iovine) in No. 408, filed July 29, 1974; and on a charge by the Board of Education of the City of New York (Board of Education) in No. 414, filed August 29, 1974.

at several schools. The electricians employed by Wickham and Perone and by Iovine were represented by the Intervener Union (Local 363 Teamsters), and there were some smaller electrical contractors whose employees were nonunion.

While the Board of Education is the central governing body of the New York City schools, it is not an agency of the city but of the State of New York with autonomy separate from the city government though receiving certain services from the city government, such as the legal services of the city corporation counsel. Shortly after the strike began, McLaren, executive director of the school board's Division of School Buildings, and Van Arsdale, Local 3's business manager, discussed on July 19 what it would take to get the Local 3 electricians back on the school jobs so that the jobs could proceed for school openings in the fall term. Immediately following the discussion, Director McLaren, issued orders to electrical contractors Wickham and Perone, and Iovine, to stop work on their several school projects, because the labor they were using was causing "work stoppages on various other buildings and projects of the Board of Education," and not to resume work until "you furnish labor that will not cause a stoppage." Shortly thereafter, on July 30, Wickham and Perone obtained a temporary restraining order from the U.S. District Court, Southern District of New York, enjoining the Board of Education from enforcing the stop work orders against them. A week later, on August 6, on advice of the corporation counsel that the stop work orders against Wickham and Perone and Iovine were improper, Director McLaren rescinded the orders.

Local 3 electricians did not resume work for their contractor-employers on school board work, and the major school building and renovation projects did not recommence, until after September 13, 1974,

when the National Labor Relations Board (the Board) obtained from the U.S. District Court, Eastern District of New York, a temporary injunction against the work stoppage, under Section 10(1) of the Act, pending disposition of the unfair labor practice charges in the case at bar.

The Respondent, Local 3, denies that the strike of school board projects had as an object pressuring the Board of Education to cease doing business with those of its electrical contractors whose employees were not members of Local 3.

Respondent Local 3 contends, first, that its collective bargaining agreement with the electrical contractors had expired on June 30, 1974 (extended by mutual consent to July 11) while negotiations for a renewed agreement were in progress, hence, argues Local 3, the walkout or strike after the labor contract expired (though it was a strike only of school work and not of other work of the same electrical contractors) was a legal walkout or strike. Second, Local 3 contends, that it had a "primary" dispute with the Board of Education, namely, that Local 3 was seeking from the Board of Education establishment of a "layoff plan," in effect a guarantee that electricians working for electrical contractors on school contracts would constitute, as electrical contracts were completed, the work force from which contractors for new work would be required to draw their electricians before hiring any other electricians. Says Local 3, this was a legal demand under the construction industry proviso to Section 8(e) of the Act and a strike to obtain it was not an illegal action under Section 8(b)(4) of the Act.

The several Charging Parties (as well as the General Counsel) contend that Local 3's defenses are sham and are designed to cover up Local 3's primary dispute with electrical contractors Wickham and Perone, and Iovine, whose employees are not affiliated with Local 3,

and to cover up the illegal object of forcing the Board of Education to cease doing business with Wickham and Perone, and Iovine.

The case was tried in Brooklyn, New York on October 24-25, 1974. Counsel for all of the parties have filed briefs.

Upon the entire record, including my observation of the witnesses and consideration of the briefs, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent Union, Local 3 IBEW, which has its principal office in Queens, New York, is, as the parties admit, a labor organization within the meaning of Section 2(5) of the Act.

Likewise, the Intervener Union, Teamsters Local 363, is a labor organization within the meaning of Section 2(5) of the Act. See exhibit GC-6b, decision of the Board, 212 NLRB No. 127 (1974), in Case 2-RC-16244.

Charging Party Wickham and Perone is a joint venture of Wickham Contracting Co. (Wickham), a New York corporation, and Ralph Perone, an individual, with the principal office and place of business in Pelham, New York. Wickham and Perone is an electrical contractor that has engaged in electrical installation at various jobsites in and about New York City. In the year prior to the filing of the complaint, Wickham and Perone purchased supplies in excess of $50,000, of which in excess of $50,000 were delivered to its jobsites in New York from points outside the State of New York. Wickham and Perone is an employer within the meaning of Section 2(2) of the Act, and is a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6), and (7), and 8(b)(4) of the Act.

Charging Party Iovine is a New York corporation with its principal office in Rosedale, New York. Iovine is an electrical contractor that has engaged in electrical installation at various jobsites in New York. In the year prior to the filing of the complaint, Iovine purchased supplies valued in excess of $50,000 of which in excess of $50,000 were delivered directly to Rosedale from points outside the State of New York. Iovine is an employer within the meaning of Section 2(2) of the Act, and is a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6), and (7), and 8(b)(4) of the Act.

Charging Party Board of Education is an agency of the State of New York with its principal office in Brooklyn, New York. The Board of Education is responsible for the education of the public school children of the City of New York, including responsibility, performed almost entirely by contracting, for construction and repair of school buildings on sites owned by the Board of Education in New York City. In the year prior to filing of the complaint, the Board of Education purchased goods in excess of $50,000, of which in excess of $50,000 were delivered directly to it from points outside the State of New York. Although, as an agency of the state, the Board of Education is not a statutory employer within the meaning of Section 2(2) of the Act, it is nevertheless a person engaged in commerce, whose operations affect commerce, within the meaning of Sections 2(1), (6) and (7), and 8(b)(4) of the Act, and a person entitled to the protection of Section 8(b)(4). Plumbers Local 298 v. County of Door, 359 U.S. 354, 358 (1959); Local 16 Longshoremen (City of Juneau), 176 NLRB 889 (1969).

Each of the electrical contractors Pettinelli, Smith, Petrocelli, Herrick, Crescent, London, Salzstein, Sheldon, Kaish, Litemore,

Heckler, Hirsch, Boro, and Mulvihill (each more fully identified as to name and place of business in paragraphs 4 through 17, respectively, of the consolidated complaint), is, as the parties admit, an employer within the meaning of Section 2(2) of the Act, and each is under contract with the Board of Education to perform electrical work at one or more of its jobsites. As the parties further admit, each of said electrical contractors is a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6) and (7), and 8(b)(4) of the Act.

II. The Unfair Labor Practices

A. The School Board's Construction Operations and Its Contractors' Union Organization

The Board of Education has a Division of School Buildings, which is responsible for design, construction, maintenance, and operation of the school facilities.

Practically all of the construction and repair is done by contracting out the work, and for this purpose the Division of School Buildings, headed by Executive Director Hugh McLaren, writes the specifications, advertises and takes bids, and prepares the recommendations for contract awards on the bids taken. The recommendations go to the Chancellor of the Board, who is its chief administrative officer. If he approves, the recommendations for award are transmitted to the Board of Education which passes upon and makes its awards in a public meeting. Thereafter, the Division of School Buildings follows up on performance of the contracts.

By law, when such construction work in excess of $50,000 is procured by bid (rather than performed by the regular employees of the governmental agency), three subdivisions of the work, namely 1) plumbing, 2) heating and air conditioning, and 3) electric wiring,

must be written up, bid for, and awarded separately. There can be a general contract for all else of the construction job.

Director McLaren testified that in the summer of 1974 he had 120 major jobs under construction at many school sites, completion of which was needed for the fall school term. For each there was a separate electrical wiring contract (as well as appropriate contracts for the other types of work). Additionally for minor jobs and maintenance, there were additional contracts including many with electrical contractors.

The major electrical contracts were largely being performed by the fourteen electrical contractors -- Pettinelli, Smith, Petrocelli, etc. -- identified in paragraphs 4-17 of the complaint. These contractors and others, had a collective bargaining agreement with Local 3 IBEW, which represented the employees of the contractors. According to Director McLaren, 98 percent of the major electrical contracts (dollarwise) were being performed by the contractors whose labor agreement was with Local 3.

However in early 1974, electrical contractors Wickham and Perone and Iovine, each were successful bidders on certain school jobs for which contracts were awarded to them. Both contractors were working on their respective jobs in early July 1974 when action to force them to stop took place. Wickham and Perone, in their separate capacities, and Iovine, are members of a contractors' association -- United Construction Contractors Association -- through whom the three were parties to collective bargaining agreements with Teamsters Local 363, which represented their electricians.[2/]

2/ At the time of trial, there had been an election on September 19, 1974, that involved, among others, the employees of the Wickham Contracting Company (one of the co-ventures of

In connection with some of the small maintenance contracts (under (5,000) between the Board of Education and contractors, including electrical contractors, according to Director McLaren, a number of one and two man shops do this work and some of these electricians are nonunion.

Additionally, the Board of Education has on its payroll, by direct hiring, about seventy electricians, who perform miscellaneous functions. According to Director McLaren, these electricians are members of Local 3 IBEW, but there is no contract for them between the Board of Education and Local 3. McLaren testified that they are paid the prevailing wage rate fixed by the City Controller's office, which has the function of establishing prevailing wage rates, where these apply to direct or to contract employees. Further, said McLaren, Local 3 represents the seventy electricians before the Controller's office in determining the prevailing wage rate applicable to them, but that the Board of Education is not a party to any of this proceeding or negotiation, and simply accepts the rates fixed by the Controller.

In addition to Director McLaren's testimony, there was also the testimony of the chairman of the Board of Education, James F. Regan, that the Board of Education has no direct relationships or dealings with any of the contruction trades unions, and that in the construction field the school board dealings with contractors and through bidding by contractors.

2/ (Continued) Wickham and Perone) but not the employees of Ralph Perone (the other co-venturer). Also involved were the employees of Iovine. The competing unions in the election were Teamsters Local 363 and Local 3 IBEW. See exhibit GC-6b. Apparently the outcome of the election had not been resolved at the time of the trial.

B. The Walkout and Related Events

In mid-1974, Local 3's labor agreement with its New York City contractors (which covered all of the contractors' work, public and private, in the five boroughs of the city) was due to terminate on June 30, 1974. Negotiations for renewal were in progress and the contract was extended to July 11, 1974, but expired without agreement being reached. (Testimony of Bernard Rosenberg, a business representative of Local 3).

Commencing in the week of July 8, 1974 and extending into the following week, the Local 3 electricians on the Board of Education jobs of their several contractors began walking off those jobs and ultimately stayed away for over two months, until after a temporary injunction under Section 10(1) of the Act was granted against Local 3 on September 13, at the request of the (Labor) Board, exhibit GC-10. As Union Representative Rosenberg testified, this walkout or strike involved between 200 and 300 Local 3 electricians, but none of the other Local 3 electricians walked out or struck the work of the employers on their other public or their commercial jobs. The bulk of the Local 3 membership continued to work, despite the absence of a labor contract, and a new contract was signed in late September 1974 by the employer's associations and Local 3.

While there was no picketing of the Board of Education jobsites by Local 3, the strike of the Local 3 electricians brought all work on these jobsites to a halt, according to Director McLaren. Because the electrical contractors had not done and were unable to do their preliminary work, such as laying pipe for wiring, the concrete men, carpenters and other trades workers ran out of work and had to stop, said McLaren. The result, he said, was a shutdown of most of the Board of Education's major jobs.

Director McLaren, who had been out of New York City when the strike began, came back and asked Local 3's business manager, Thomas Van Arsdale, for a meeting. They met on Friday, July 19, at McLaren's office.

Local 3's, Business Manager Van Arsdale told McLaren that the work stoppage of the Board of Education jobs had been authorized on July 8 at a union membership meeting, but that some of the men "jumped the gun" and the strike had had a spasmodic start. Van Arsdale did not testify, but Union Representative Rosenberg supplied some details concerning the union meeting of July 8. Rosenberg testified that between 1,500 and 2,000 members attended, that Van Arsdale told the members that the men who worked on Board of Education was not awarding enough jobs to contractors with Local 3 men, that other contractors who did not have agreements with Local 3 were being awarded contracts with more frequency, and that he, Van Arsdale, approved a work stoppage because there was no work contract and because he and they felt that job security was being threatened since the Board of Education was more frequently awarding electrical contracts to non-Local 3 contractors and the Local 3 men would not be working on Board of Education jobs as in the past.[3/] According to Rosenberg, Van Arsdale also outlined for the union members a "tentative proposal" he was making to the City and the Board of

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3/ In his prior testimony before the U.S. District Court (exhibit GC-11), Union Representative Rosenberg testified that there was no discussion of a work stoppage at the union meeting and that Local 3 members working on the Board of Education jobs decided spontaneously they would not report to work, that he, Rosenberg, told them he approved it, and that Van Arsdale told Rosenberg he approved Rosenberg's action. In the case at bar, Rosenberg changed this testimony to what was recited above.

Education for some job security, under which the men working on school jobs, as their work finished, would constitute a layoff list from which the contractors would draw men first on new jobs awarded them.

Coming back to the July 19 meeting of Director McLaren and Union Business Manager Van Arsdale, McLaren asked why the Local 3 electricians were off the job, and Van Arsdale said he was concerned about the security of work of his Local 3 members, that the work available to them was dropping off, and that inasmuch as they had done practically all of the work for the Board of Education for many years, they should continue to do that work. McLaren replied, the Board of Education could not provide for that legally, that under the state and municipal law the lowest responsible bidder was entitled to the work no matter which union his employees belonged to. Van Arsdale referred to the schools in which Wickham and Perone and Iovine were doing the electrical contracting, along with an allegation that Wickham and Perone were not paying the prevailing wage rate. McLaren said his people would do all they could to see that Local 3 contractors were not unfairly bid against, but on qualifications of contractors such as Iovine, whom he knew was not aligned with Local 3, he said he saw no way to recommend against the award of a contract.

Van Arsdale said that his people had been to talk to the Mayor and Deputy Mayor and Corporation Counsel, and McLaren replied that the Board of Education was not a city agency.

McLaren said he was concerned, he had 120 major jobs under construction now stopped because the electricians were out, and he asked Van Arsdale, what would it take to get his men back to work? Van Arsdale replied he needed full assurance from the Board of Education that would give job security to the Local 3 members.

The meeting ended by McLaren saying he would talk to the Deputy Chancellor (McLaren's immediate superior) and they would get back to Van Arsdale.

Immediately following his meeting with Union Business Manager Van Arsdale, Director McLaren discussed the matter with associates, he said, and, concluding that with the need for school openings in September it would be better to stop a few jobs rather than keep most of the 120 jobs stopped, he forthwith sent letters to Wickham and Perone (exhibit GC-2, dated July 19, 1974), to Iovine, and to several small electrical maintenance contractors, also not aligned with Local 3, ordering them off their jobs. The letters told each of the contractors addressed that the labor he was using was causing work stoppages on various other Board of Education projects, and that he must stop work until such time as he furnished labor that would not cause a stoppage.[4/]

Anthony Biele, president of Wickham, and in charge of the joint venture Wickham and Perone, was telephoned the same day, July 19, by one of McLaren's subordinates, Burns, telling him that the Board of Education was sending him the described letter and that he was to leave his jobs immediately and until he acquired other labor that would not cause work stoppages. Biele asked how he was doing that, and Burns replied, by not employing Local 3 men. Biele said he would not pull his men off the job until he got something in writing.

4/ The letters purported to invoke Article 5 of the Board of Education contract, which provided that a contractor shall not have work performed or labor or means employed in carrying out his contract that would cause or result in a suspension, delay, or strike of the work under the contract of any of the trades working in or about the premises or in any other building of the Board of Education.

Biele received the McLaren letter ordering him off the job the following Monday, July 22. He telephoned the school board Director of Construction Turecamo who said he took his orders from the executive director McLaren, and passed him to McLaren. McLaren told Biele he wanted his men off the job at once, accusing him of not paying the prevailing wages and having too many apprentices on the jobs. When Biele protested that he had been investigated on this score by the Controller, who had found he paid the right wages and had the proper amount of apprentices, and that McLaren should consult the Controller, McLaren then told Biele that he was causing work stoppages by not employing Local 3 members, and to get his men off the job immediately. Biele asked if there was any way he could resolve the matter, and McLaren answered that he could work only by joining or being a member of Local 3. They argued, and McLaren concluded the discussion by saying he was issuing field directives to have Biele's men thrown off the jobs. (McLaren in his testimony did not contradict Biele's testimony.)

A half-hour later Biele was told by his foremen that they had received school board field directives (exhibit GC-4) to leave the jobsites, and Biele told them he had no choice and they should comply. The Wickham and Perone electricians left the jobsites and did not return until three or four weeks later, after Wickham and Perone obtained a temporary restraining order against the Board of Education from preventing Wickham and Perone performing its contracts (U.S. District Court, S.D.N.Y., dated July 30, 1974, exhibit GC-3), and after the Board of Education rescinded the stop work orders against Wickham and Perone, and others, by letters dated August 6, 1974 (exhibits GC-5a and b).

Eugene Iovine, president of electrical contractor Iovine, also received a telephone notice to stop work (as in the case of Biele of

Wickham and Perone), followed by a Board of Education written stop work order, on July 23, 1974. The call to him came from school board Director of Construction Turecamo, who told Iovine his men would have to leave the two school jobs they were on because Local 3 was stopping work on over 100 school jobs unless Teamster affiliated contractors and non-alliliates of Local 3 were removed from Board of Education jobsites. Iovine called the school board action ridiculous and said he intended to finish his contract jobs. Turecamo replied that Iovine would be receiving a letter from Director McLaren telling Iovine that it did not have the men of the labor type that Local 3 wants on the jobs. Further, said Turecamo, if the Iovine electricians didn't stay away from the two jobs, he would lock the gates of the jobsites.

Iovine asked if the stop work orders included other trades, and Turecamo answered they applied only to the electrical trade. After receiving the written stop work order, Iovine and his men continued to work in defiance of the instructions to stop.[5/]

Director McLaren testified that on July 19, in his meeting with Local 3's Business Manager Van Arsdale, he did not tell Van Arsdale he was going to have calls made or letters sent to Biele and Iovine to leave their jobs on the school sites; but, on July 25, he telephoned Van Arsdale and said he had removed the contractors who were not Local 3 contractors from the school jobs and expressed the hope that on the basis of this, Van Arsdale's men would go back to the jobs

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5/ In connection with the later August 6th recision of the stop work orders, following the temporary restraining order against the school board, supra, Director McLaren explained that he was informed by Deputy Corporation Counsel Buxbaum that it was erroneous to use Article 5 of the electrical contracts (see note 4, supra) for the purpose his Division was using it, and the stop work orders should be rescinded. McLaren complied.

because the schools were badly needed for September. Van Arsdale replied he would look into it, but he wanted a meeting with McLaren's superior, Vice Chancellor Gifford. The meeting was arranged for that afternoon, July 25. At the meeting, said McLaren, Van Arsdale went over the ground he had previously covered with McLaren (at the July 19 meeting), essentially the need for job security for Local 3 electricians and assurances from the Board of Education that Local 3 men would not be put out of work. According to McLaren, Van Arsdale mentioned a layoff list, and this, said McLaren, was the first time he had heard of a layoff list or layoff plan, which was later discussed at a larger meeting in the Deputy Mayor's office in the third week of August. Van Arsdale reiterated, said McLaren, that since Local 3 electricians did most of the Board of Education electrical work they should continue to do it.

Dr. Bernard Gifford, the Deputy Chancellor, testified (at the call of Respondent Local 3) that at the July 25 meeting were Director McLaren and himself of the school board, and Van Arsdale and a Mr. O'Hara for Local 3. Dr. Gifford had been previously informed, he said, of the strike action by Local 3 and of McLaren's action to remove contractor Wickham and Perone and other contractors not affiliated with Local 3. Van Arsdale talked about Local 3's role in doing work for the City of New York and the Board of Education, and spoke repeatedly, said Dr. Gifford, of the need to provide job security for Local 3 members. When Dr. Gifford pressed Van Arsdale on what the school board could do, it became obvious, said Dr. Gifford, that there were problems between Local 3 IBEW and Local 363 Teamsters, Van Arsdale alluding to a jurisdictional dispute between Local 3 and Local 363 and noting that the school board had let contracts to contractors who were not Local 3 contractors but employed Local 363

members, specifically naming Wickham and Perone. Van Arsdale also made accusations against Local 363, said Dr. Gifford, regarding the apprenticeship program and kickbacks.

Dr. Gifford told Van Arsdale that he was not a hearing officer and could not sit in judgment, and asked Van Arsdale for a concrete proposal to recommend to the Board of Education. According to Dr. Gifford, Van Arsdale gave him none nor did he give any sense of what he wanted. Van Arsdale said he had made certain suggestions to Deputy Corporation Counsel Buxbaum on job security with the City for members of Local 3, referring to these in general terms and indicating he was not prepared to describe them in writing or with any definiteness. Dr. Gifford finally asked Van Arsdale to put in writing what he wanted Gifford or the Board of Education to do, and said Dr. Gifford, he would set up a meeting for Van Arsdale with the school board. Van Arsdale said he would comply, but never sent anything to Dr. Gifford. Dr. Gifford's testimony was devoid of any reference to a layoff list or plan or discussion of such a list or plan by Van Arsdale at this meeting.

Continuing his testimony, Vice Chancellor Dr. Gifford told of a next meeting on August 20, 1974, in the office of Deputy Mayor Cavanaugh. In addition to himself, Director McLaren, and Local 3's Business Representative Van Arsdale, among those participating were the Deputy Mayor, the Deputy Corporation Counsel Buxbaum, the school board Chancellor Anker, the school board President James Regan and several school board members, including Joseph Monserrat and Amelia Ashe. (Those of the school board members and staff -- other than McLaren -- who testified concerning the meeting were called by Respondent Local 3, and again, as already noted, its principal, Van Arsdale, did not testify.)

According to school board member Monserrat the discussion was on the issue of getting the Local 3 workers off strike and back to work. According to school board President Regan there was an unanswered question of why Local 3 was picking on the Board of Education projects and not other projects, and reference to the great inconvenience in delaying new schools for 23,000 children and the loss of time and safety dangers to other children in schools where modernizing was going on. Van Arsdale stated, said Regan, that he had to be concerned about his Local 3 workers, and the others were not his problems.

According to Dr. Gifford, President Regan, Member Monserrat, and Director McLaren, Van Arsdale spoke of job security for members of Local 3, and talked of a layoff plan or list; and, while he had not reduced any of it to writing, addressed himself to City work as well as Board of Education work.[6/] Under the plan the electricians working for contractors on public projects would constitute a work force to be listed as their jobs were completed and they were laid off, and contractors acquiring new public work would be required to hire electricians from the layoff list in order of seniority of layoff before hiring elsewhere. Under the proposal said Member Monserrat, it would be required that members of Local 3 IBEW on the list be hired by contractors who did not have collective bargaining contracts with Local 3, and it was also stated that members of Teamsters Local 363, on the list would be hired by contractors who did not have collective bargaining contracts with Local 363. In the case of the Board of Education work, Van Arsdale said, the proposal was made to assure employment for a

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6/ On the day following the meeting, viz. August 21, 1974, Local 3 Business Manager Van Arsdale sent a letter to school board President Regan enclosing a five-sentence outline of his layoff plan, exhibit R-1.

group of electrical workers who in a sense had been working for the Board of Education for many years. Monserrat and his colleagues testified that they understood Van Arsdale's main purpose was to provide work for his Local 3 members, and that while the plan on its face did not purport to exclude Local 363 members or nonunion electricians or others not affiliated with Local 3, the fact was that the great bulk of the electricians were members of Local 3.

At the meeting, President Regan, and his colleagues, expressed grave doubts as to the legal and practical efficacy of the plan. Regan said the Board of Education did not deal with the unions of its construction contractors, but only with the contractors and with them through competitive bidding.[7/] Member Monserrat raised the question of meeting minority quotas and apprenticeship quotas and other hiring requirements established by law, when such type job applicants were not on the layoff list; and also pointed out that, under the relatively new decentralized school system requiring consultation by the central school board with local school boards on matters affecting them, the central board could not unilaterally impose that Van Arsdale wanted. According to

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7/ In this connection, according to Director McLaren, prior to the August 20, 1974 meeting, the Board of Education, at a meeting of its own, attended by its administrative officers and lawyer (the Deputy Corporation Counsel), adopted the opinion that the labor dispute in which Local 3 was engaged was not a dispute between Local 3 and the Board of Education but between Local 3 and Board of Education electrical contractors -- Pettinelli, Smith, Petrocelli et als -- and directed McLaren to advise each such contractor that the Board of Education would hold each to performance of his contract on time without an extension of time, see form letter, exhibit GC-8, dated August 15, 1974. Exhibits GC 9a-d were typical replies to the school board from some of the electrical contractors disclaiming responsibility for the work stoppage or power to resolve any of the issues involved, and claiming entitlement to an extension of time.

President Regan, Deputy Corporation Counsel Buxbaum expressed doubt as to the legality of Van Arsdale's plan.

Regan, Monserrat, and Gifford pointed out that even if the City came up with some such union type employment plan as advocated by Van Arsdale, the Board of Education, as a separate state agency, could not necessarily go along, but would have to make its own determination in the light of the requirements on it.

Following the August 20 meeting the Local 3 strike and the stoppage of work on the principal school board jobs continued for almost another month until after the issuance by the U.S. District Court (E.D.N.Y.) on September 13, 1974 of a temporary injunction against Local 3, under Section 10(1) of the Act (exhibit GC-10).

C. Local 3 Conduct Directed to Teamster Affiliated Contractors

President Anthony Biele of Wickham, and in charge of the joint venture Wickham and Perone, testified that after he was ordered to stop work on the school board jobs by Director McLaren, he was called by and met with Local 3's business representative Rosenberg on July 25, 1974.

President Biele testified that, after a sales pitch on the advantages of being affiliated with Local 3, Union Representative Rosenberg told Biele that if he joined Local 3, Local 3 would give him good men to complete the Wickham and Perone contracts on the school jobs, then idled by the Board of Education stop work order. According to Biele, Rosenberg did not claim that he represented any of the Wickham and Perone electricians,[8/] and Biele told Rosenberg

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8/ Union Representative Rosenberg conceded that he did not show any authorization or membership cards to President

that he, Biele, could not make a decision for his men, or vote for them, or tell them to vote for Local 3.

President Eugene Iovine of electrical contractor Iovine, whose school board contracts were also the subject of Director McLaren's stop work notices, testified, without contradiction, that while he had not been approached by Local 3's representative Rosenberg, he had been asked at an earlier time by Local 3's agent D'Arcy to drop Teamsters Local 363, with whom Iovine had a labor contract (through its association of contractors -- United Construction Contractors Association), and go with Local 3 IBEW.

Notwithstanding Local 3's strike of school board jobs, contractor Wickham and Perone continued to bid on new contracts with the school board, and, as Director McLaren testified, was the low bidder on the Martin high school renovation that required over a million dollars of electrical work. McLaren, further testified that in the light of U.S. District Court Judge Stewart's restraining order of July 30, 1974 (exhibit GC-3, supra) enjoining the Board of Education from, among other things, holding up awards of contracts to Wickham and Perone, he forwarded the Wickham and Perone bid to the school board with a recommendation for award of the contract. When the matter reached the school board for award at its public meeting of October 16, 1974, Local 3's representative Rosenberg appeared and urged denial or postponement of the award, seeking to present witnesses that Wickham

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8/ (Continued) Biele or name any Wickham and Perone employees who were interested in Local 3, and admitted that he asked Biele to sign a consent agreement with Local 3. Rosenberg also testified that after the September 19, 1974 election that pitted Local 3 IBEW against Teamsters Local 363 (in which election Wickham employees were involved, see note 2, supra), Local 3 called a strike, against Wickham on September 23, and Rosenberg claimed that a number of Wickham employees joined in the strike.

and Perone paid kickbacks, and arguing that the successful bidder was not abiding by the apprentice program or the prevailing wage determinations, or both.

School board Member Monserrat, who presided at the public meeting, testified that the school board took the position that it was not the proper forum to hear and determine such complaints, that there were hearing and review board procedures under the Controller's jurisdiction to deal with such matters, and that since there had been compliance with the procedures leading to the signing of the contract, the Board of Education was not in a position to refuse or postpone the award, and the contract was awarded to Wickham and Perone. In passing the approving resolution, said Monserrat, it was noted that if the complaints alleged were proven correct the Board of Education would take appropriate action to rescind the contract.

D. Section 8(b)(4) Findings

The evidence establishes that an object -- if not the principal object -- of the strike of the school board jobs by Respondent Local 3 IBEW electricians was to pressure the Board of Education, through pressure on its contractors, to cease doing business with electrical contractors whose employees were not Local 3 members, in particular contractors Wickham and Perone and Iovine whose electricians were Teamster Local 363 members.

The principal staff of the Board of Education clearly got that message directly from Local 3's Business Manager Van Arsdale after the strike began. Van Arsdale complained on July 19, 1974 to the executive director of school buildings McLaren, and again to the school board Vice Chancellor Dr. Gifford, on July 25, that Wickham and Perone and other electrical contractors not affiliated with Local 3 had been awarded school board work which Local 3 electricians had

been doing almost exclusively, and took the position that the members of his union should continue to do that work and be assured of it before ending their strike and coming back. Reacting immediately and cooperatively on July 19th to Van Arsdale's complaint and message, Director McLaren sought to induce the return to work of the more numerous Local 3 electricians, by ordering contractors Wickham and Perone and Iovine and their Teamster Local 363 electricians off the few school jobs they were performing. This attempt to eliminate the contractors not affiliated by labor contracts with Local 3 was aborted shortly thereafter by the restraining order of the United States District Court against the school board, and by the school board repudiation and recision of Director McLaren's stop work orders aimed at the contractors not aligned with Local 3.

Further supporting evidence of the objective to remove from and keep off school board work the non-Local 3 contractor and its Teamster affiliated employees was the concomitant action of Local 3's representative Rosenberg, on July 25, attempting to induce President Biele of Wickham and Perone to sign up with Local 3 and complete with Local 3 electricians his current school board jobs, then halted by Director McLaren's stop work orders.[9/] When this failed, Local 3 gave further evidence of pursuing its objective by attempting to prevent the award of new Board of Education work to Wickham and Perone at the school board meeting of October 16.

It is a fair inference that had contractors Wickham and Perone and Iovine agreed to sign with Local 3 and use Local 3 electricians in July the work stoppage by Local 3 would have ended. It is also

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9/ Before the Local 3 strike of the school board jobsites, a similar overture had been made to contractor Iovine, whose electricians were also affiliated with Teamster Local 363, by another Local 3 representative D'Arcy, that Iovine sign up with Local 3.

apparent that Respondent, having initially struck to obtain all school board work for its members and having observed from the events of the first month of the strike that the school board could not or would not agree to award work only to Local 3 contractors, then suggested the layoff list plan in the second month of the strike at the meeting of city and school board officials, August 20, 1974.[10/] The layoff list proposal was another way of insuring continued Local 3 presence on school board jobs and (City public works jobs), almost exclusively in the case of the school board, since Local 3 contractors and their electricians were performing 98 percent of the school board work. While the layoff list might include a token number of Teamster Local 363 electricians and non-union electricians, the bulk of the list would be Local 3 electricians.

Local 3 contends that because its labor contracts with the major electrical contractors had expired on July 11, 1974, Local 3 members were not thereafter obliged to work for any contractor and Local 3 was not required to ask any members to work for any contractor. However, the proof was that, on July 8, Local 3 and its Business Manager Van Arsdale authorized and directed a walkout of those members who were working on Board of Education jobsites, because, among other things, their job security was being threatened by the Board of Education more frequently awarding electrical contracts to non-Local 3 contractors; while the much larger portion of the membership continued without interruption to work on other public and commercial work of their contractors in the city of New York notwithstanding the absence

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10/ The testimony of the school board members and principal staff (Dr. Gifford and Director McLaren) made clear that this was the first time the Board of Education was apprised of the layoff list proposal.

of a renewed labor contract until late September (testimony, Director McLaren and Union Representative Rosenberg).[11/]

Thus, Respondent Local 3 was actively and directly responsible for the strike and induced and encouraged employees to refuse to perform services for their employers. The absence of a labor contract had no effect on the large majority of Local 3 members who continued working on non-school board work, and the determinant factor in precipitating the work stoppage of Local 3 members on school board work was not the absence of a labor contract but rather the deliberate calling of a strike to put pressure on the school board to cease doing business with non-Local 3 contractors.

For purposes of further argument, Local 3 prefers to ignore its primary labor dispute with the Teamster affiliated electrical contractors, Wickham and Perone and Iovine. Instead, Local 3 contends that its primary labor dispute was with the Board of Education from whom, says Local 3, it was demanding the inclusion of a layoff plan in future school board contracts for electrical work. The plan would bind the electrical contractors to employ the electricians now doing school board jobs, who would comprise the "layoff" list as their jobs were completed, and thereby "preserve" school board work almost exclusively for Local 3 electricians who now do almost all of that work.

There are two obvious difficulties with this contention. First, it was an afterthought, proposed by Local 3's Business Manager Van Arsdale to the Board of Education on August 20, 1974, more than a

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11/ The failure of Respondent Local 3 to call as a witness Business Manager Van Arsdale, its principal officer and actor in these events, gives rise to the inference, adverse to Respondent, that he would not contradict the testimony of the others concerning his conduct and statements including admissions to them, see UAW v. N.L.R.B. (Gyrodyne), 459 F. 2d 1329, 1336 (C.A.D.C., 1972).

month after the strike began. As already indicated, the motivation for the strike, at its inception, was to put pressure on the school board to cease doing business with non-Local 3 electrical contractors and when it became apparent by the second month of the strike that the Board of Education would not deal only with Local 3 contractors, Respondent switched to the so-called "primary" demand.

Second, the "primary" demand rests upon an alleged primary relationship between the Board of Education and the Local 3 electricians, who are employed by the major electrical contractors, said to be akin to direct school board employment of such electricians, on assertions that several hundred of these electricians work year in - year out only on school board work, and are directly supervised by the school board, 12/ as are school board employees. The assertions were not established, and what was claimed to be school board supervision of the electrical work performed by contractors turned out to be the presence of school board inspectors on jobsites, from time to time, checking compliance with job specifications. On its part, the Board of Education, from the testimony of its members and principal staff, rejected the existence of any such direct relationship between the school board and the employees of its contractors, and there are no facts that contradict this position, or that constitute the school board's relationship to the construction work a surrender of neutrality. As the (Labor) Board said in Steelworkers Local 14055 (Dow Chemical Co.), 211 NLRB No. 59, 86 LRRM 1381, 1383 (1974).

> "The short answer to this line of argument is that the Board does not normally predicate loss of neutral status

12/ These electricians are not the seventy electricians (taken note of under heading A, supra) who are Local 3 members, directly employed in the school system for maintenance and other tasks by the school board.

on economic interdependency alone, absent such factors as common ownership or managerial control (citations omitted)."

Moreover, even if it were to be found that one of the objects of the Local 3 strike was the obtaining from the Board of Education, as "an employer in the construction industry," a limiting agreement affecting contracting or subcontracting at construction jobsites under the first or construction proviso to Section 8(e) of the Act,[13/] such objective would not excuse the Section 8(b)(4) violation arising from the concurrent objective of the strike to force the Board of Education to cease doing business with the Teamster affiliated contractors, N.L.R.B. v. Denver Building and Construction Trades Council, 341 U.S. 675, 688-690 (1951); Northeastern Indiana Building and Construction Trades Council (Centlivre), 148 NLRB 854, 857-858 (1964), enforcement denied on other grounds, 352 F.2d 696 (C.A.D.C.,

13/ While the Board has not directly held that a governmental agency, such as the Board of Education, can be an "employer in the construction industry," within the meaning of the proviso to Section 8(e) of the Act, collateral decisions -- such as International Ass'n Machinists (Lufthansa) 197 NLRB 232, 237-238 (1972), enf'd 491 F.2d 367 (C.A. 9, 1974), holding that "employer" under Section 8(e) is used in the broader generic sense than the statutory definition of Section 2(2) and is the equivalent of "person;" and Los Angeles Bldg. and Construction Trades Council (Church's Fried Chicken), 183 NLRB 1032, 74 LRRM 1669 (1970), holding that a company, primarily in the business of selling chicken at its stores, that acted as its own general contractor for building the stores was notwithstanding its primary business an "employer in the construction industry" as used in Section 8(e) -- suggest that in an appropriate case the obtaining of an agreement from the Board of Education under the construction proviso of Section 8(e) would be sanctioned by the Act.

1965); Retail Clerks Local 770 (Wesco), 145 NLRB 307, 308-311 (1963).

Respondent Local 3's strike of the Board of Education jobsites, with an object of requiring the electrical contractors employing Local 3 members to cease doing business with the Board of Education to force the Board of Education to cease doing business with electrical contractors Wickham and Perone, Iovine, and other employers of electricians not represented by Local 3, and had a secondary objective that was proscribed by and in violation of Section 8(b)(4)(i) and (ii) of the Act.

Conclusions of Law

1. In the period July - September 1974, Respondent Local 3 induced and encouraged its members, employees of the major electrical contractors for the Board of Education, to walk off and strike the jobsites where such employers were performing work for the Board of Education, and struck such jobsites, causing a complete cessation of work, with an object of forcing the major electrical contractors to cease doing business with the Board of Education to force the Board of Education to cease doing business with electrical contractors Wickham and Perone, Iovine, and certain other employers of electricians who were not members of or represented by Local 3. Such conduct by Local 3 constituted unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

2. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

It will be recommended that Local 3 cease and desist from engaging in the unfair labor practices and take the affirmative action of posting appropriate notices.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, there is hereby issued the following recommended:[14]

ORDER

Respondent Local 3, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Inducing or encouraging any of its members or other individual employed by the electrical contractors doing business with the Board of Education, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force said electrical contractors to cease doing business with the Board of Education to force the Board of Education to cease doing business with electrical contractors Wickham and Perone, Iovine, and others whose employees are not members of or represented by Local 3.

(b) Threatening, coercing, or restraining the electrical contractors of the Board of Education, or the Board of Education, or other persons engaged in commerce or in an industry affecting commerce, where an object thereof is to force the electrical contractors to cease doing business with the Board of Education to force the Board

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[14] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and shall its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

of Education to cease doing business with electrical contractors Wickham and Perone, Iovine, and others, whose employees are not members of or represented by Local 3.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post in its business offices and meeting halls, copies of the attached notice marked "Appendix."[15/] Immediately upon receipt of copies of said notice, on forms to be provided by the Regional Director of Region 29 (Brooklyn, New York), Local 3 shall cause the copies to be signed by one of its authorized representatives and posted, the posted copies to be maintained for a period of sixty consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 3 to insure that said notices are not altered, defaced, or covered by any other material.

(b) Return to the Regional Director for Region 29, by mail or otherwise, a sufficient number (as determined by him) of the signed copies of the notice for posting by the electrical contractors, including those affiliated with Local 3 and those that are not, and by the Board of Education, if they are willing, at locations where notices to employees and contractors are customarily posted.

15/ In the event that the Board's order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 29, in writing, within twenty days from the date of this order, what steps Local 3 has taken to comply herewith.

Dated at Washington, D.C., March 7, 1975.

/s/ Herzel H.E. Plaine
Herzel H.E. Plaine
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

THE NATIONAL LABOR RELATIONS BOARD HAVING FOUND, AFTER A TRIAL, THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT, WE HEREBY NOTIFY YOU THAT:

WE WILL NOT induce or encourage any of our members or other individual employed by the electrical contractors doing business with the Board of Education of the City of New York or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal, in the course of his employment, to use, manufacture, process, transport or otherwise handle or work on any goods, articles, or materials, or commodities or perform any services, where an object thereof is to force said electrical contractors to cease doing business with the Board of Education to force the Board of Education to cease doing business with electrical contractors Wickham and Perone, Iovine, and others, whose employees are not members of or represented by Local 3 IBEW.

WE WILL NOT threaten, coerce, or restrain the electrical contractors of the Board of Education, or the Board of Education, or other persons engaged in commerce, where an object thereof is to force the

the electrical contractors to cease doing business with the Board of Education to force the Board of Education to cease doing business with electrical contractors Wickham and Perone, Iovine, and others, whose employees are not members of or represented by Local 3 IBEW.

LOCAL 3, IBEW, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241 (Tel. No. (212) 596-5386).

[Dated 9/26/75] [D--192
Brooklyn, N.Y.]

* * * * *

DECISION AND ORDER

On March 7, 1975, Administrative Law Judge Herzel H. E. Plaine issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings,[1/] findings,[2/]

1/ Respondent argued that it was deprived of due process because the Administrative Law Judge: (a) quashed four subpoenas served on members of the Board of Education; (b) barred testimony designed to establish that Respondent intended to become the collective-bargaining representative of Wickham's employees and thus would not try to replace them with Local 3 members; and (c) considered testimony concerning Respondent's report at a public hearing called by the Board of Education without permitting the introduction into evidence of a tape recording of that meeting. We have carefully examined the entire record and find that, in view of the additional, uncontradicted evidence relied on by the Administrative Law Judge in finding a secondary object, Respondent was not prejudiced by these rulings.

2/ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951).

and conclusions[3/] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Local 3, International Brotherhood of Electrical Workers, AFL--CIO, Flushing, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C., September 26, 1975

Betty Southard Murphy, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

2/ (Continued) We have carefully examined the record and find no basis for reversing his findings.

3/ Since we have found that the strike called by Respondent had a secondary objective, we find it unnecessary to reach the issue of whether or not Respondent's demand for a "layoff plan" was valid under the 8(e) construction site proviso.

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO	
and	Case No. 29-CB-1992
WICKHAM CONTRACTING CO., INC.	
Stephen E. Appell, Esq., Brooklyn, N.Y., for the General Counsel.	
N. George Turchin, Esq., New York City, for the Charging Party.	
Norman Rothfeld, Esq., of Menagh, Trainor & Rothfeld, New York City, for the Respondent.	

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Local 3, International Brotherhood of Electrical Workers

Case No.: 29-CB-1992

12. 6.74	Charge filed
1. 6.75	Complaint and Notice of Hearing, dated
1. 7.75	Order Amending Complaint, dated
1. 9.75	Answer received

1.27.75	Request for postponement, dated
1.28.75	Order rescheduling hearing, dated
3. 5.75	Hearing opened
3. 6.75	Hearing closed
5.28.75	Administrative Law Judge's Decision issued
6.20.75	Respondent's exceptions to the Administrative Law Judge's Decision received
9.12.75	Board's Decision and Order, dated

[Issued 5/28/75] [JD-286-75 Brooklyn, N.Y.]

* * * * *

DECISION

Statement of the Case

ANNE F. SCHLEZINGER, Administrative Law Judge: Upon a charge filed on December 6, 1974, by Wickham Contracting Co., Inc., referred to herein as Wickham or the Charging Party, the General Counsel, by the Regional Director for Region 29 (Brooklyn, New York), issued a complaint and notice of hearing on January 6, and an Order Amending Complaint on January 7, 1975, alleging in substance that Local 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Respondent, restrained and coerced the Charging Party in the selection of its representatives

for the purposes of collective bargaining and the adjustment of grievances, in violation of Section 8(b)(1)(B) of the Act.

The Respondent, in its answer duly filed, admits some of the factual allegations of the complaint, but denies the unfair labor practice allegations.

Pursuant to notice, a hearing was held before the undersigned Administrative Law Judge at Brooklyn, New York, on March 5, and 6, 1975. All the parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. Counsel made opening statements at the beginning of the hearing and closing remarks at the end of the hearing, and, subsequent to the hearing, briefs were filed by the General Counsel and the Respondent on or about March 31, 1975, all of which have been fully considered.

Upon the entire record in this case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Charging Party

Wickham is, and at all times material herein has been, a corporation duly organized under, and existing by virtue of, the laws of the State of New York, with its principal office and place of business in the City of Pelham, County of Westchester, State of New York, herein referred to as the Pelham office. It is, and at all times material herein has been, engaged in providing electrical installation, contracting, and related services at various construction jobsites in the State of New York. During the calendar year 1974, Wickham's total income for services performed as an electrical contractor was approximately $3,000,000, its services performed for firms located outside the State of New York had a total value of approximately

$1,150,000, and it purchased from firms located outside the State, and caused to be transported to jobsites in the State, supplies valued at over $200,000 for certain Wickham-Perone joint ventures, and supplies valued at over $50,000 for its operations.[1/] The Board, in a representation case involving the parties herein, designated Wickham as one of the employer members of an association. I find, as the complaint alleges, that Wickham is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organizations Involved

The complaint alleges, the Respondent in its answer admits, and I find, that the Respondent is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act. I also find that the Teamsters, which was an intervenor and appeared on the ballot in the representation case, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Issues

The complaint alleges that, at all times material herein, Wickham has been represented by the United Construction Contractors Association, herein called the Association,[2/] for the purposes of collective bargaining and the adjustment of grievances with Local 363,

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1/ Anthony Biele, who purchases supplies for Wickham and for the Wickham-Perone joint ventures, testified that he makes no purchases for Perone separately. The Wickham-Perone relationship is further discussed in Section III.C below.

2/ Counsel for the Charging Party stated at the hearing that he was counsel also for the Charging Party as a member of the Association.

International Brotherhood of Teamsters, herein called the Teamsters, as the representative of Wickham's employees' that Wickham and other members of the Association were parties to a collective bargaining agreement with the Teamsters effective from November 15, 1970, to November 14, 1973, containing an annual automatic renewal clause;[3/] that on August 17, 1973, the Respondent filed a petition for certification as the representative of the employees of all the employers party to the Association-Teamsters agreement; that an election was held in such multi-employer unit on September 19, 1974, the result of which awaits resolution of the determinative challenges and the objections to the election filed by the Respondent; that on various dates in or about July, October, and December, 1974, the Respondent, by its agents Van Arsdale and Rosenberg, demanded that Wickham recognize and bargain with the Respondent on an individual basis, and has since about these dates been picketing Wickham locations, with an object of forcing and requiring Wickham to abandon the Association as its bargaining representative, and to force or require Wickham to recognize and bargain collectively with the Respondent on an individual basis; and that the Respondent by such conduct restrained and coerced an employer in the selection of his representatives for the purposes of collective bargaining and the adjustment of grievances, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(B) and Section 2(6) and (7) of the Act.

The Respondent, in its answer duly filed, admits that Van Arsdale and Rosenberg, business manager and business agent of the Respondent, are, and at all times material herein have been, agents of the Respondent acting on its behalf; states that it lacks knowledge or information

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3/ Local 819 of the Teamsters, which was signatory to this agreement, was succeeded by Local 363 about a year ago.

sufficient to form a belief as to the truth of the allegations regarding Wickham's business operations; denies that Wickham has been represented by the Association at all times material herein, denies the unfair labor practice allegations; and demands that the complaint be dismissed.

B. The Representation Case

Pursuant to the petition filed by the Respondent seeking representation of the employees in a multi-employer unit of Association members, the Board issued a decision finding that the record lacked sufficient information as to the identity of the Association members, and remanded the case for further proceedings.[4/] Thereafter the Board, in a supplemental decision, named a number of "individual employers whose employees are included" in the Association-wide unit,[5/] one of whom was Wickham. An election was directed in this unit, and was held on September 19, 1974. At the time of the hearing herein, issues as to determinative challenges and objections to the election filed by the Respondent were not yet resolved.

C. The Wickham-Perone Relationship

Anthony Biele, referred to herein as Biele, is the president of Wickham. The only other officer of Wickham is his brother Albert, who is the secretary. Biele testified that Wickham has been a member of the Association since Wickham was established about 7 years ago, first as a partnership and later as a corporation; that he attends meetings of, and pays dues to, the Association, and has at all times

4/ United Construction Contractors Association, 210 NLRB No. 16.

5/ United Construction Contractors Association, 212 NLRB No. 127.

been a member in good standing; and that the Association bargains collectively with the Teamsters for the Wickham employees, Wickham is a party to the Association collective bargaining agreements with the Teamsters, and Wickham has no individual contract with any union.

Ralph Perone is a licensed electrician and the sole owner of his electrical contracting business. He is not a member of the Association, but his employees are members of the Teamsters, and he is party to separate collective bargaining agreements with that organization.

Biele testified that Wickham contracts to perform electrical work on construction projects which it performs with its employees. He also testified that on certain municipal projects, the City of New York requires that the work be done by a licensed electrical contractor; that as Wickham does not have such a license while Perone does, on work for City of New York agencies within the City, Wickham and Perone operate as a joint venture, with Wickham providing the funds and bonding capital, and Perone performing the work with its employees; but that, on State and Federal Government jobs within or beyond City limits, Wickham operates separately. Wickham and Perone have offices at the same location in Pelham, but maintain separate payrolls and separate personnel, although some of their employees, including some of Biele's brothers, switch back and forth between Wickham and Perone jobs, depending upon the need for their services at a particular jobsite, at times within the same week, in one instance in the course of one day. The employees are paid separately, however, by Wickham or by Perone, on the basis of the jobsite on which their work was performed.

D. Respondent's Demands on Wickham for Recognition

1. The first demand by Rosenberg

Albert Biele, secretary of Wickham, testified that Rosenberg, an admitted agent of the Respondent, came to the Wickham office one

day in about April, May, or June; that Comins, an electrical engineer, Biele, and possibly Perone, were present; that Rosenberg during the discussion said the Respondent had a pool of good men and a good training program, Wickham would be better off with the Respondent than with the Teamsters, and Wickham would not have the troubles it was then having if it joined the Respondent; that Rosenberg asked if the Bieles would agree to a meeting with the Respondent to discuss this; and that he agreed.

Comins, an electrical engineer, who testified that he has been employed by Wickham for 2 years and is not a member of the Teamsters, also testified that Rosenberg came to the office in about May or June, and said it would be better for Wickham to have members of the Respondent in lieu of members of the Teamsters.[6/] the Respondent had men available with better training, and Wickham was having various job problems it would not have with employees who were members of the Respondent; that he, Comins, pointed out Wickham could not do this because of the Association contract; and that, at Rosenberg's request, there was agreement to have a meeting to discuss the matter with the Respondent.

Perone testified that Rosenberg's visit to the office was in May; that Rosenberg said there would be fewer problems, and the benefit of a pool of trained men, if Wickham joined the Respondent; and that no agreements were reached.

6/ Counsel for the Respondent cross-examined Comins at length about use of the phrase "in lieu of," and Rosenberg, called as a witness for the Respondent, testified that this phrase is not part of his vocabulary. Comins testified, however, that he used the phrase not as a quotation but in stating the substance of what Rosenberg said.

Rosenberg, who has been a business representative of the Respondent about 8 years, testified that he visited the Pelham office in the spring and met with Biele and his brother Albert; that he thought Perone and Comins were also there; that "I discussed . . . to the best of my recollection, the advantages of Wickham Electric signing an agreement with Local Union 3. That we have their men, some of their men, who we feel want to come into Local Union 3. We represent some of their men. I spoke to them about the advantages of Wickham Electric signing an agreement with Local Union 3." He also testified that "What I said was, that the men who are employed by Wickham, that want to come into 3, we consider them as part of Local Union 3, and I never said to Mr. Biele, and his associates, that they should replace their men with our men." Rosenberg also testified that the answer made to him was that "We're really not ready, at this time, to come into Local 3"; and that he concluded the discussion by stating that this was their first meeting, that "Part of my job as a business representative is meeting with employers and the men, and trying to -- and have the employer think about coming into our labor organization," and that there would be further meetings. Rosenberg admitted that he knew at the time of this meeting that Wickham was a member of the Association.

2. The second demand by Rosenberg

Biele testified that Rosenberg telephoned his office and asked for a meeting, each to appear alone; that he wanted to ask Rosenberg why Wickham had been notified on July 22 that it could no longer perform certain school construction work it had been doing for the Board of Education in the City of New York, so agreed to the meeting; and that they met in a restaurant on July 24. Biele testified further that Rosenberg urged him to sign a contract with the Respondent, and

stated that if he did the Respondent would provide a well-trained crew to complete the work at the Board of Education jobsites, and would give Wickham fair treatment; but that he replied he could not do this as he was a member of the Association, his men were members of the Teamsters, and he could not select another union for his employees.

Rosenberg testified that during this meeting at the restaurant, which lasted for hours,[7/] "I told Mr. Biele that I represented the men working for him, a good many of the men working for him, perhaps dozens of men who were employed by Wickham Electric, and that these men told me that they want to come into Local 3, that I represented these men, and that I asked Mr. Biele if he would consider coming into Local 3, signing an agreement with Local Union 3, being that I represented his men, most of his men." Rosenberg also testified that Biele asked questions about how his men would be classified by the Respondent, and that he replied they would be classified according to whatever designation was given them by Biele, that the Respondent does not classify these men and does not even know if they are electricians. He testified further that during that conversation with Biele, "I often asked him when do you think he'd be ready to come into Local 3, and he said it might take him a year or two;" and that he told Biele, "We had Wickham's men out on strike, and we considered their men our men, and what we wanted is for Mr. Biele to sign an agreement with Local Union 3, and then the men who were out on strike would then go back to work for Wickham Electric. At no time did I say to him that we'll take away his men and give him our men." Rosenberg also

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7/ Counsel for the Respondent asked a number of questions of Biele and of Rosenberg about how much wine was consumed by Biele with the dinner, but Rosenberg testified that "I was drinking the wine with Mr. Biele," and that neither he nor Biele was drunk.

testified that, while he knew Wickham was a member of the Association, he did not mention Association bargaining when he asked Biele to sign an agreement with the Respondent.

An Excelsior list of names was submitted in connection with the Board election on about August 6, 1974. Rosenberg testified that when he noticed that the list did not contain the names of all the Wickham employees the Respondent had out on strike, he made inquiries of the employees and learned "there was a Wickham Electric, and a Wickham-Perone Electric, and that the men that we had out on strike, who were employed by Wickham, their names did not appear on the list, because, after investigation, we found that they were also employed by Wickham-Perone, and Wickham-Perone is not a -- an Association Employer;" that when "these electrical workers were employed on City jobs, and where a license was needed, they would be employed by Wickham-Perone. When they were working on jobs where not license was needed, they would be employed by Wickham;" and that he was at the Pelham office only once and "when I was there, I had the understanding that, . . . Wickham was the Employer there."

Rosenberg also testified that when he learned about the Wickham-Perone setup, he directed, shortly after the election, which was held on September 19, 1974, that a picket line be set up with signs stating that Wickham-Perone employees were on strike.

3. The demand by Van Arsdale

After the Respondent had been picketing the Pelham office for about a week, one of the pickets came up to the office and asked if Biele would meet with Van Arsdale, business manager of the Respondent, and offered, if Biele agreed, to discontinue the picketing in good faith. Biele agreed, and a meeting with Van Arsdale took place at a restaurant on October 7, 1974. Albert Biele and Perone accompanied Biele.

Biele testified that Van Arsdale said that the Respondent had all Wickham's men so Wickham presumably was ready to join the Respondent; that he said that was not true as only about three of his men quit Wickham and apparently joined the Respondent; that Van Arsdale said a lawsuit Biele and Perone had filed against the Board of Education for removing them from certain school construction jobs was "a waste of time" but could be continued after Wickham joined the Respondent; that Van Arsdale argued that it would be a good idea for Wickham to join, and sign a contract with, the Respondent, which had a pool of well-trained men; that he responded that he was a member of the Association, that the election vote in which his employees participated was being evaluated by the Board, and that it was not for him to decide his employees should be in the Respondent; that Van Arsdale said Wickham could quit the Association and have the Wickham employees vote again, separately, to go into the Respondent; and that, when it appeared that Wickham was not going to join the Respondent, Van Arsdale raised a question about Wickham conforming with City job specifications.

Albert Biele testified as to this meeting that Van Arsdale said that the Respondent had all the Wickham employees, and that Wickham would be better off with the Respondent, which had good men available, and asked if Wickham was willing to sign a contract with the Respondent. He also testified that Biele in reply said Wickham belonged to the Association, which had a contract with the Teamsters, so he could not join the Respondent except through the Association, and a representation election had been held by the Board but the results were not yet known; and that Van Arsdale then said Wickham could pull out of the Association and have a separate election.

Perone testified that Van Arsdale at this meeting commented that this matter must be important as he never meets with contractors

but has business agents to do so; that he then said he guessed they were ready to sign up; and that, when one of the Bieles asked what he meant, Van Arsdale said the Respondent had all their men. Perone also testified that Van Arsdale argued that Wickham would benefit in a number of ways by going with the Respondent, which had many trained and experienced men; and that Wickham could tell its men to vote for the Respondent and go over legally as an individual contractor. He also testified that Van Arsdale, upon learning that Perone had a separate contract with the Teamsters, asked if Perone would consider coming into the Respondent, but he replied that he already had an excellent pool of men, that his men were represented by the Teamsters, and that he could not select a different representative for them. Perone testified further that when he or the Bieles pointed out that they were harmed by being thrown off the school jobs, Van Arsdale assured them they could continue their lawsuit as a member of the Respondent; and that Van Arsdale also said he could make it "very beneficial" if they went with the Respondent "because there were specs written up for City of New York jobs, and certain things could be done to make sure the letter of the spec was done on every job, and that he was going to have a meeting with certain people to make sure all contractors in the City of New York, not specifically stating us, were living up to the letter of the spec." Perone also testified that nothing was agreed on at this meeting.

Van Arsdale was not called as a witness. Counsel for the Respondent explained at the close of the hearing: "Mr. Van Arsdale did not appear here to controvert the testimony with respect to his conversation because whatever inaccuracies there were in the account of that conversation, and a conversation did take place, were not factually sufficient to affect the legal position of the Respondent in this case. So, we decided to obviate Mr. Van Arsdale spending time here.

We do have a 35,000 man Union involved, and Mr. Van Arsdale also has other matters that go beyond the scope of this particular Local Union."

E. Respondent's Picketing of Wickham

Wickham entered into a contract to perform electrical work for Downstate Medical Center, a New York State institution, and Wickham employees began work there in about January 1973. Wickham-Perone as a joint venture contracted to do electrical work on Kings County Hospital, a New York City institution, and Perone employees began work there in July 1974. These two projects are located in Brooklyn across the street from each other.

Rosenberg testified that, when he saw the Excelsior list submitted by Wickham for the Board election, "I noticed the employees of Wickham Electric on the list, and it did not include all the names of the people that we had out on strike;" that he made inquiries; and that "I found that there was a Wickham Electric, and a Wickham-Perone Electric, and that the men that we had out on strike, who were employed by Wickham, their names did not appear on the list, because, after investigation, we found that they were also employed by Wickham-Perone, and Wickham-Perone is not a -- an Association Employer. So that there was no Excelsior List for Wickham-Perone, just for Wickham." Rosenberg testified further that, shortly after the Board election held on September 19, he directed that a picket line be placed in front of the Pelham office, and "I instructed that the signs say that, regular picket signs, Wickham -- employees of Wickham-Perone are out on strike." He continued, however, that "We have various signs. Some of the signs indicate that the Employer, Wickham-Perone, does not pay fair wages. There's many different types of signs that we use in our various picketing duties. . . . We have many types of signs . . .

Some are printed commercially, and some we print by hand." Rosenberg testified that he did not recall any signs referring only to Wickham, but admitted that he had difficulty recalling what the various signs said after more than a year, and explained that "I really didn't know the relationship between Wickham and Perone."

Biele testified that the Respondent began picketing at the Pelham office in early October, a few weeks after the Board election. He testified further, as Perone did also, that there were hundreds of pickets in front of the office one day, but that other than that one day there were only about 10. Biele also testified that picketing went on from about 10 a.m., to 4 p.m., every day except when the weather was bad. Biele and Comins testified that some of the signs carried by the pickets at the office said Wickham employees were on strike. Biele also testified that none of his employees were on strike at that time.

As noted above, a picket at the Pelham office promised that the picketing would be discontinued in good faith if the Bieles agreed to meet with the Respondent to discuss the situation. The picketing did stop when the Bieles promised to do so, and met, as described above, with Van Arsdale. Biele testified that a few weeks later the Respondent resumed picketing at the Wickham office; that, at the time of the hearing herein, this picketing was still going on from about 10 a. m. to 2 p. m. every day except on holidays and in bad weather; and that the picket signs carried in front of the office varied, with some saying "Employees of Wickham on strike," some saying, "Employees of Wickham-Perone on strike," some saying the strike was for recognition and decent wages, and all carrying the Respondent's name and some also the Respondent's address.

Biele testified also that the Respondent began picketing at the Downstate Medical Center and Kings County Hospital jobsites on

about December 3. Biele, Perone, and Schlau, a Perone employee, testified that on about December 3 there were approximately 100 pickets at these jobsites. Other than that one day, the picketing has continued, in accord with a police order, with about 6-10 pickets. Biele testified further that the picketing was at the main entrance to the Downstate Medical Center, a Wickham project, and at the entrance to the building at the Kings County Hospital where the electrical work was being performed, a joint venture jobsite, and that some of the signs used at the jobsites indicated employees of Wickham-Perone were on strike for recognition and decent wages. There is evidence that some Wickham employees left their jobs and became members of the Respondent, but, Biele testified, none of the Wickham employees were on stroke at this time, and all of the Wickham employees continued to work during the picketing.

The Respondent introduced into evidence photographs of a group of 11 pickets, shown in front of the Downstate Medical Center and the Kings County Hospital jobsites, carrying signs stating that 'The Electricians of Wickham Perone Co. on strike, Pays Sub-Standard Wages, we want all Electrical Workers to be paid decent wages," followed by the Respondent's name. The Bieles and Perone stated that they did not see these signs, and Biele testified that prevailing wages were paid at both jobsites.

Concluding Findings

I found Anthony Biele, Albert Biele, and Perone candid and straightforward witnesses. Any discrepancies in their descriptions of events appeared to result from memory lapses due to the passage of time, not from any desire to misrepresent what occurred. Moreover, one of the Respondent's agents here involved, Van Arsdale, did not testify, and the other, Rosenberg, in large part confirmed

the testimony of the Bieles and Perone. To the extent that Rosenberg's testimony is in conflict with theirs, I found them more convincing witnesses, and I credit their testimony.

The Board in the representation case found Wickham to be an employer member of the Association whose employees were involved in the election, and Biele testified credibly that Wickham has continued at all times to be a member in good standing of the Association. Perone has never been a member of the Association, and his employees were not included in the election unit.

The Respondent urges that Wickham could withdraw from the Association, that most of the Wickham employees had become members of the Respondent, and, therefore, that it agents could lawfully demand recognition by Wickham. Wickham, however, chose to remain a member of the Association, the evidence does not establish that most of the Wickham employees were members of the Respondent, and the question concerning representation of the Wickham employees was before the Board. The Respondent also argues in its brief that Biele produced no exhibits showing picket signs that referred to Wickham separately, and also that Biele never showed the Respondent documents as to which were Wickham and which were joint venture jobsites. I credit Biele's testimony as to the picket signs, however, and, further, I find no obligation on Biele's part, in the circumstances of this case, to have shown the Respondent documents identifying whose jobsites these were. Counsel for the Respondent stated at the hearing that he does not question the correctness of the Board's finding that Wickham was an employer and a member of the Association, and he admitted that Rosenberg knew this. Rosenberg's testimony shows that he knew this, and also that he was aware of the Wickham-Perone relationship. The Respondent urges nevertheless that the evidence does not show that Wickham has at all

times continued to be a member of the Association, and argued at the hearing and in its brief that Wickham and Perone should be found to constitute a single employer, so that the Respondent could not picket one without picketing the other. The Respondent, however, presented no credible or probative evidence showing that Wickham's employer status has changed since the Board decision, or showing that Wickham and Wickham-Perone constitute a single employer for purposes of this proceeding.

It is apparent, from the credited testimony and the record as a whole, and I find, that Wickham, Perone, and Wickham-Perone as a joint venture, are separate entities, and that Wickham has been an employer and a member of the Association at all times material herein. The record also establishes, and I find, that the Respondent's agents, although aware of Wickham's status, nevertheless demanded that Wickham, without awaiting a Board determination of the representation case issues, withdraw from the Association, direct its employees in a separate election to designate the Respondent, and enter into a contract with the Respondent. I find, further, that the Respondent's agents threatened that Wickham could continue to be faced with certain problems if it refused to comply with these demands whereas these problems would be resolved if Wickham agreed to enter into a contract with the Respondent. It is also apparent, and I find, from the credited testimony as to statements made by the Respondent's agents and as to the picketing, that the Respondent sought to force Wickham to comply with its demands by picketing Wickham's office, on one occasion with hundreds of pickets, and by picketing a Wickham jobsite, on one occasion with about 100 pickets.

In conclusion, therefore, I find that the Respondent, by the conduct of its agents Rosenberg and Van Arsdale, knowing that Wickham was a member of the Association which bargained collectively

with the Teamsters on behalf of Wickham's employees, and knowing that the question as to their representation was before the Board, nevertheless, on various dates, beginning in about June 1974 and continuing to date, demanded that Wickham recognize and bargain with the Respondent as the exclusive collective bargaining representative of the Wickham employees, on an individual basis, threatened continuing problems if Wickham refused, and picketed Wickham at its office and jobsite, as a separate entity and as part of a joint venture, with an object of forcing Wickham to abandon the Association as its bargaining representative and to force Wickham to recognize and bargain with the Respondent on an individual basis, and that the Respondent, by such acts and conduct, restrained and coerced an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances, in violation of Section 8(b)(1)(B) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section III above and found to constitute unfair labor practices, occurring in connection with the business operations of the Charging Party set forth in Section I above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(b)(1)(B) of the Act, I shall recommend that the Respondent be ordered to cease and desist therefrom and from in any like or related manner restraining or coercing

Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances, and that it take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel urged, at the hearing and in its brief, that the Respondent be ordered not only to cease and desist from the violations found with regard to Wickham, but also with regard to any other employer member of the Association, while the Respondent argued that such an order was not appropriate. I do not find such a broad order warranted by the evidence in this case.

On the basis of the foregoing findings of fact and upon the entire record in this case, I make the following:

Conclusions of Law

1. Wickham Contracting Co., Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 3, International Brotherhood of Electrical Workers, AFL-CIO, and Local 363, International Brotherhood of Teamsters, are labor organizations within the meaning of Section 2(5) of the Act.

3. By restraining and coercing Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances, the Respondent has violated Section 8(b)(1)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[8/]

ORDER

The Respondent, Local 3, International Brotherhood of Electrical Workers, New York, New York, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) By demands for recognition, threats, and picketing, restraining and coercing Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) In any like or related manner restraining or coercing Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."[9/] Copies of said notice

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8/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

9/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED

on forms provided by the Regional Director for Region 29, after being duly signed by one of its authorized representatives, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Return to the Regional Director for Region 29, by mail or otherwise, signed copies of said notice for posting by Wickham Contracting Co., Inc., if willing, at its business offices and jobsites where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this decision, what steps the Respondent has taken to comply herewith.

Dated at Washington, D.C.

/s/ Anne F. Schlezinger
Anne F. Schlezinger
Administrative Law Judge

9/ (Continued) PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT by demands for recognition, threats, or picketing, restrain and coerce Wickham Contracting Co., Inc., in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL NOT in any like or related manner restrain or coerce Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances, in violation of Section 8(b)(1)(B) of the National Labor Relations Act.

LOCAL 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241 (Telephone Number 212-596-3535).

[Dated 9/12/75] [D--274
New York, N.Y.]

* * * * *

DECISION AND ORDER

On May 28, 1975, Administrative Law Judge Anne F. Schlezinger issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt her recommended Order as modified herein.

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[1] Although we find, in agreement with the Administrative Law Judge, that Respondent violated Sec. 8(b)(1)(B) of the Act, we do so solely on the grounds that the effect of Respondent's threats and picketing was to restrain and to coerce Wickham Contracting Co., Inc., in its retention of the United Construction Contractors Association as its designated representative for the purpose of collective bargaining and the adjustment of grievances. The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing her findings.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and orders that Respondent Local 3, International Brotherhood of Electrical Workers, New York, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) By threats and picketing, restraining and coercing Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances."

2. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C., September 12, 1975.

John H. Fanning, Member

Howard Jenkins, Jr., Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT, by threats or picketing, restrain and coerce Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

WE WILL NOT in any like or related manner restrain or coerce Wickham Contracting Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances, in violation of Section 8(b)(1)(B) of the National Labor Relations Act, as amended.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--596--3535.

EXHIBITS FROM CASE NOS. 29-CC-408, 410, 414

GENERAL COUNSEL'S EXHIBIT NO. 2

Board of Education of the City of New York

DIVISION OF SCHOOL BUILDINGS
28-11 Bridge Plaza North
Long Island City, N.Y., 11101
Telephone 361-7711

July 19, 1974

SUBJECT: Tremont E.C.C. #1 - Bronx

Wickham Contracting Co., Inc.
& Ralph Perone
415 5th Avenue
Pelham, N.Y. 10803

Gentlemen:

The labor which you are using in the performance of your contract at the above building is causing work stoppages on various other buildings and projects of the Board of Education.

You are therefore directed to stop work until such time as you furnish labor which will not cause stoppage, all in accordance with Article #5 of the contract.

Very truly yours,

/s/ Hugh McLaren, Jr.
HUGH McLAREN, Jr.
Executive Director
Division of School Buildings

HMcL:lc

GENERAL COUNSEL'S EXHIBIT NO. 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X

RICHLAM CONTRACTING CO., INC., and
RALPH FERONE,

- Plaintiffs,

- against -

74 Civil

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, HUGH McLAREN, JR., NEW YORK ELECTRICAL CONTRACTORS ASSOCIATION, EMPIRE ELECTRICAL CONTRACTORS ASSOCIATION, ASSOCIATION OF ELECTRICAL CONTRACTORS, INC., LOCAL UNION NUMBER 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, THOMAS VAN ARSDALE and EDWARD ROSENBERG,

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER

Defendants.

- -X

Upon reading and filing the annexed affidavits of Ralph Ferone and Anthony Biele, each sworn to on July 25, 1974, with the exhibits annexed thereto, and the complaint in this action,

Let the above-named defendants show cause at a term of this Court in room 506 of the United States Courthouse, Foley Square, New York, New York, at 10:00 A.M., on July 29, 1974, or as soon thereafter as counsel can be heard, why an order should not be made, pursuant to Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining the defendants, pending the final determination of this action, from awarding or re-awarding to any person other than the plaintiffs, or from performing or suffering or permitting the performance of work upon plaintiffs' aforesaid contracts with the Board by any person other than plaintiffs; and from performing any actions and practices under color of any law, for the purpose or effect of depriving any person, including the plaintiffs, of the oppor-

tunity to bid for, to obtain and freely to perform work upon electrical contracts with any department or agency of the City of New York, including the defendant, The Board of Education of the City of New York, or for the purpose of otherwise depriving the plaintiffs of the right to receive and to enjoy the equal protection of the laws, and due process of law.

Now, it appearing that the actions of the said Board in ordering the plaintiffs to stop work on their contracts with the Board until they furnish labor which does not cause members of Local 3 International Brotherhood of Electrical Workers, to stop their work on other buildings and facilities of the Board have the effect of illegally and unconstitutionally disqualifying and excluding the plaintiffs from bidding on, obtaining and performing present and future electrical contract work for the said Board, and thereby they cause immediate and irreparable harm to plaintiffs, for which money damages are not an adequate remedy it is

ORDERED that pending this Court's hearing and determination of plaintiffs' motion for a preliminary injunction, the defendants, the Board of Education of the City of New York; Hugh McLaren, Jr. ~~New York Electrical Contractors Association; Association of Electrical Contractors, Inc.; Local Union Number 3, International Brotherhood of Electrical Workers, AFL-CIO~~ Thomas Van Arsdale and Bernard Rosenberg, their agents, servants and employees, are hereby restrained and enjoined from disqualifying and excluding the plaintiffs from bidding on, obtaining and performing present and future electrical work contracts for

the Board of Education of the City of New York, on the alleged ground that plaintiffs' labor upon the said contracts has caused or will cause members of the said Local 3 to stop their work on other buildings and facilities of the said Board; from performing any other actions and practices, under color of any law, for the purpose or effect of depriving any person, including the plaintiffs, of the right to receive and to enjoy the equal protection of the laws, and due process of law; and it is further

ORDERED that plaintiffs post a bond or other security in the amount of $ 10,000 for the payment of such costs and damages as may be incurred or suffered by any of the defendants if it is subsequently determined that they were wrongfully restrained or enjoined; and it is further

ORDERED that, sufficient reason appearing therefor, a copy of this Order, the papers upon which it is granted, and plaintiffs' bond or other security be served upon the office of the Corporation Counsel of the City of New York before 10 A M., on ~~July~~ Aug. 31, 1974, and that such service be deemed good and sufficient service thereof.

Dated: New York, New York
July 30, 1974.

Charles E. Stewart
U.S.D.J.

GENERAL COUNSEL'S EXHIBIT NO. 4

CITY OF NEW YORK

BOARD OF EDUCATION

BUREAU OF CONSTRUCTION

DATE July 22 1974 11:00 AM

SCHOOL P.S. #41 MODERNIZATION

BOROUGH Richmond

CONTRACTOR Wickham Electric

SHEET NO. 1 OF 1

TO: Mr. Louis Biele

SUBJECT STOP ORDER

In Accordance With Previous Instructions You Are Hereby Directed To Stop Work Immediately And Leave The Building Premises.

DCH

SIGNATURE Project Supt

97-49 500 BI-S. 5-69 82

1053, acting electrician R.P.

GENERAL COUNSEL'S EXHIBIT NO. 5(a)

Board of Education of the City of New York

DIVISION OF SCHOOL BUILDINGS
28-11 Bridge Plaza North
Long Island City, N.Y. 11101
Telephone 361-7711

August 6, 1974

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SUBJECT: P.S. 41 - Richmond - Modernization

Wickham Contracting Co., Inc.
& Ralph Perone
415 5th Avenue
Pelham, N.Y. 10803

Gentlemen:

In regard to our letter of July 23, 1974 date directing you to stop work in accordance with Article #5 of your Contract and/or Contract #1, you are to disregard that letter and resume work on the above project.

Very truly yours,

HUGH McLAREN, Jr.
Executive Director
Division of School Buildings

HMcL:dz

July 23, 1974

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SUBJECT: P.S. 41 - Richmond - Modernization

Wickham Contracting Co., Inc.
& Ralph Perone
415 5th Avenue
Pelham, N.Y. 10803

Gentlemen:

The labor which you are using in the performance of your contract at the above building is causing work stoppages on various other buildings and projects of the Board of Education.

You are therefore directed to stop work until such time as you furnish labor which will not cause a stoppage, all in accordance with Article #5 of the contract.

Very truly yours,

HUGH McLAREN, Jr.
Executive Director
Division of School Buildings

HMcL:lc

NOTE: This is the same letter dated July 19, 1974 and sent by regular mail.

GENERAL COUNSEL'S EXHIBIT NO. 5(b)

Board of Education of the City of New York

DIVISION OF SCHOOL BUILDINGS
28-11 Bridge Plaza North
Long Island City, N.Y. 11101
Telephone 361-7711

CERTIFIED MAIL

August 6, 1974

SUBJECT: School	Spec.
115 - M	P.E. 270 - 69/70
37 - X	197 - 71/72
S. Gompers H.S. - X	359 - 71/72
S. Gompers H.S. - X	23 - 72/73

Wickham Perone Jr. Vent.
415 Fifth Avenue
Pelham, N.Y.

Gentlemen:

In regard to our letter of July 24, date directing you to stop work in accordance with Article #5 of your Contract and/or Contract #1, you are to disregard that letter and resume work on the above project.

Very truly yours,

HUGH McLAREN, Jr.
Executive Director
Division of School Buildings

HMcL/bs

* * * * *

CERTIFIED MAIL

July 24, 1974

SUBJECT: School	Spec.
115 - M	P.E. 270 - 69/70
37 - X	197 - 71/72
S. Gompers H.S. - X	359 - 71/72
S. Gompers H.S. - X	23 - 72/73

Wickham Perone Jr. Vent.
415 Fifth Avenue
Pelham, N.Y.

Gentlemen:

The labor which you are using in the performance of your contracts at the above buildings is causing work stoppages on various other buildings and projects of the Board of Education.

You are therefore directed to stop work until such time as you furnish labor which will not cause a stoppage, all in accordance with Article 5 of the contract.

Very truly yours,

HUGH McLAREN, Jr.
Executive Director
Division of School Buildings

HMcL/jsf

GENERAL COUNSEL'S EXHIBIT NO. 6(a)

COLLECTIVE BARGAINING AGREEMENT

between

UNITED CONSTRUCTION CONTRACTORS ASSOCIATION

LOCAL 363

November 15, 1970 to November 14, 1973

Contract Between:
WICKHAM - PERONE & LOCAL 363, I.B.T.

AGREEMENT, made this 14th day of November, 1970 by and between UNITED CONSTRUCTION CONTRACTORS ASSOCIATION, INC., hereinafter designated and referred to as the "ASSOCIATION"; and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 819, hereinafter referred to as the "UNION".

WITNESSETH:

WHEREAS, the UNION maintains contractural relations with the members of the ASSOCIATION, pursuant to Collective Bargaining Agreements; and

WHEREAS, the parties are desirous of entering into an agreement relating to conditions of employment of the employees of the members of the ASSOCIATION, so that there may be harmonious cooperation between the employers and their employees, and so that there may be uniform conditions and terms of employment in the Electrical Contracting Industry, in which industry members of the ASSOCIATION are engaged as employers:

NOW THEREFOR, IT IS AGREED AS FOLLOWS:

ARTICLE I

RECOGNITION:

1. The ASSOCIATION agrees, on behalf of its present and future members who are in the Electrical Contracting Industry, to comply with the provisions of this agreement.

2. THE ASSOCIATION, on behalf of itself and its members, acknowledges that the UNION represents a majority of the workers employed in the ASSOCIATION-WIDE unit consisting of the workers covered by this agreement employed by the respective members of the ASSOCIATION, and has been designated by said electrical workers

as their sole and exclusive collective bargaining representative. The ASSOCIATION, on behalf of itself and its present and future members, agrees to recognize the UNION during the entire period of this agreement, as the sole and exclusive collective bargaining representative of the workers, covered by this agreement. It is further agreed, that neither the ASSOCIATION nor any of its members, nor any of their respective agents, shall, directly or indirectly, discourage membership in the UNION.

3. The ASSOCIATION agrees that each member of the ASSOCIATION, as a condition for membership (or continued membership) in the ASSOCIATION, shall execute a membership application which shall contain the following provision:

> We agree to be bound by, and to comply with the terms of any agreement now existing or which may hereafter be entered into between the ASSOCIATION and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 819, with the same force and effect as though we had by these present executed the same as a party."

A duplicate original of the membership application shall be sent to the UNION by the ASSOCIATION within five (5) days after its execution by a member.

4. All workers employed by the members of the ASSOCIATION in connection with any and all operations involved in their business, with the exception of non-electrical workers, non-working supervisors, plant guards, and office help shall be covered by this agreement. As a condition of their further employment, all such workers shall become and remain members of the UNION, in good standing, at the end of their respective trial periods herein provided. All employees covered

by this agreement shall thereafter remain members of this UNION as a condition of their employment.

ARTICLE II

UNION SECURITY:

5. Each employee covered by this agreement shall become a member of the UNION after the seventh (7th) day following the beginning of such employment, or the effective date of this agreement, whichever is later. Each employer shall apply for all new electrical workers he requires through the UNION. Should the UNION be unable to provide a worker satisfactory to the Employer within forty-eight hours after the mailing of a written request therefor, then the Employer shall be free to procure such workers from other sources. However, each employer shall require every worker to present, not later than one day after he is employed, a working card issued to him by the UNION directing him, for work, to the Employer; and the Employer agrees not to continue the employment of any worker who shall not procure such card. The UNION agrees to issue such cards to all workers, without any discrimination whatsoever, and without any requirement that such worker be a member of the UNION. Any Contractor who hires UNION employees, without calling upon the UNION pursuant to the agreement, or who hires non-union men, who do not have or apply for working cards from the UNION with the prescribed time, shall have effected a breach of this agreement in its very essence.

ARTICLE III

HOURS OF WORK & WAGES:

6. A week's work shall consist of Thirty Five (35) hours, divided into Five (5) days of Seven (7) hours each, performed between

the hours of Eight (8) A.M., and Six (6) P.M., from Monday through Firday of each week. Time and one-half shall be paid for all work on Saturday. Double time shall be paid for all work on Sundays and double time plus holiday pay shall be paid for work on the paid holidays hereinafter listed. Time and one-half shall be paid after Seven (7) hours on each regular working day. On any regular working day the eighth hour is guaranteed or a maximum of Five (5) hours per week. At the option of the employer and employee may be required to work up to two hours overtime in any one working day. The employee may not be required to work more than two hours overtime on any work day. Wages shall be paid once a week for all work done prior to the date of payment. Weekly wages shall be paid in cash unless the employer secures a permit from the Department of Labor to pay by check. Payment of wages shall be on Company time. Should any employee be required to work after 6 P.M., on any day, than any hour or fraction thereof of such work performed after 6 P.M. and before 12 Midnight, shall be paid for at the rate of one and one-half times regular pay; any work performed between 12 Midnight and 8 A.M., shall bepaid for at the rate of two times regular pay. However, in the event such employee shall be regularly employed to work a shift between the hours of 6 P.M. and midnight, his rate of pay shall be the same as the ordinary rate of pay, performed between the hours of 8 A.M. and 6 P.M., from Monday through Friday of each week, plus additional compensation in the amount of Eight (8%) per cent of the normal hourly wage. In the event such employee shall be regularly employed to work a shift between the hours of Midnight and 8 A.M., his rate of pay shall be the same as the oridinary rate of pay performed between the hours of 8 A.M. and 6 P.M., from Monday through Friday of each week, plus additional compensation in the amount of twelve (12%) percent of the normal hourly wage.

Wages shall be at the rate set forth on the schedule annexed to and forming a part hereof. Any employee called to work on a shift, shall in no event receive less than four hours pay.

ARTICLE IV

HOLIDAYS:

7. Each Employer shall allow all electrical employees the following Holidays with pay, regardless of the day of the week on which the Holiday falls.

1.	New Years Day	5.	Independence Day
2.	Washington's Birthday	6.	Labor Day
3.	Decoration Day	7.	Thanksgiving Day
4.	Day After Thanksgiving	8.	Christmas

Should any of the aforementioned Holidays fall within the seven (7) day period referred toherein in Paragraph "5", the employee shall receive pay for such Holiday after the aforesaid (7) day period has been completely worked. All laid-off employees receive Holiday pay for the aforementioned Holidays only if they have worked at any time within five working days before or after the Holiday. All employees not laid off within five (5) working days before or after the Holiday, are required to work the day before and the day after the Holiday, if such days are working days, in order to be entitled to receive Holiday pay. Holiday pay shall be paid for work on holidays hereinabove set forth.

ARTICLE V

VACATION:

8. Paid vacation shall be given on a pro-rata basis at least once a year, or at the time of final termination of the Employer-employee relationship, whichever shall occur first, as follows:

Four per cent of base pay per annum shall be paid to any employee working three (3) days of continuous employment to qualify for vacation pay, should there be a termination of their employment.

A. The employer agrees that he will give all employees paid vacations at any time during the calendar year which is mutually agreeable to the Employee until such payment is due to the employee.

B. The UNION is granted an option to establish a Vacation Plan. If such Vacation Plan is created, the UNION shall serve written notice to the ASSOCIATION, setting forth the procedures for remittance of vacation pay by the Employers.

ARTICLE VI

DISCHARGE CLAUSE:

9. (A) After an Employee shall have been employed for 28 days, no employer shall have any right to immediate discharge, except for DISHONESTY, DRUNKENNESS, OR ASSAULT. Immediately upon discharge, he shall notify the Union, in writing by registered mail of the alleged reasons therefor. Should the Union challenge the discharge within twenty-four (24) hours after receipt of such notice, and in the event the matter cannot be adjusted between the parties, it shall be a grievance to be settled as hereinafter provided. Should the employee be found innocent of the charge, he shall be reinstated immediately, with pay from the date of discharge.

(B) Should an Employer have a grievance or complaint other than for reasons set forth hereinabove, he shall notify the Union in writing by Registered Mail of his complaint. If the parties cannot adjust same, it shall be a grievance to be adjusted as hereinafter provided. In no event however, is the employee to be discharged or dismissed from the premises until after the decision by the grievance committee.

ARTICLE VII

DISCRIMINATION:

10. There shall be no discrimination of any kind against any member of the Union for: Union activity, Race, Color, Creed, or Nationality, by the Employer or anyone in his employ.

ARTICLE VIII

MODIFICATION:

11. Neither the Association, or any Employer nor an individual worker or group of workers will have the right to modify or waive any of the provisions of this agreement. No Employer will enter into any individual agreements or arrangements with any of its employees covered by this agreement.

ARTICLE IX

SHOP STEWARD:

12. The Union shall have the right to establish a Shop Steward in each shop covered by this agreement. Such Shop Steward shall have the right to take up with a Representative of the Employers all grievances arising out of this agreement. The Shop Steward shall have super-seniority.

ARTICLE X

REDUCTION OF WAGES:

13. Nothing in any provision of this agreement shall be so construed, anything to the contrary notwithstanding, as to effect a reduction in wage rate of any worker, or increase the number of hours per week which the worker shall be compelled to work in order to earn his present weekly wage.

ARTICLE XI

EXAMINATION OF BOOKS & RECORDS:

14. The Union shall have a right to examine books and records of any Employer, to determine the days of employment, hours and wages paid to its employees. The Union, shall give the employer reasonable notice, personally, by telephone, by mail, and/or by telegram, of its intention to examine the books and records, stating the date and time that the examination shall take place. Unless otherwise stated, as hereinafter set forth, said examination shall take place at the employers place of business, during reasonable business hours.

(A) If such notice is served by telegram or by certified mail, the Union shall give the Employer a minimum of seven (7) days notice, from the date of sending said communication, as to the date, and time of examination. In the event the employer cannot keep the appointment, and requests an adjournment of this examination, said adjournment shall be secured by use of a telegram and/or certified mail, which shall be sent no later than three (3) days prior to the date of the scheduled examination.

(B) The employer shall be liable to a maximum sum of fifty (50) dollars, as and for damages and or expenses, incurred by the union, in sending an accountant, and/or an employee, or both, to the employers place of business, and not being afforded an opportunity to hold the examination. This shall apply in such situation wherein the employer has not adjourned the scheduled examination. It being intended, that the union shall not make needless trips and incur expenses, in attempting to conduct an examination of the employers books and records.

(C) In the event an employer fails to permit an examination of his books and records, and/or adjourns, cancels or otherwise delays

an examination for a period in excess of three (3) weeks from the date of first notice of intention given by the union, the books and records shall thereafter be examined at the offices of the union.

(D) The books and records required to be produced by an employer, shall be limited to those books and records relevant to wages and hours, as well as any forms submitted by the employer to the Internal Revenue Service, as and for deductions made by the employer relating to payments as and for the Pension Fund E, Welfare Fund E, Annuity Fund E, and Joint Industry Fund E.

(E) In the event an arbitration proceeding shall be had, as hereinafter set forth, the employer shall produce all of the relevant books and records pertaining to the arbitration proceeding.

(F) Nothing in this contract shall be interpreted so as to prohibit the right of any Union Representative to visit the shop or site during business hours.

(G) The failure by the employer, to permit the examination of his books and records, shall be deemed to be a material breach of this agreement. Said breach shall in no fashion or manner relieve the employer from any and all responsibilities and liabilities pursuant to the terms of this Agreement. The union shall in no effect or manner be deprived in any of its rights and remedies hereunder.

ARTICLE XII

BULLETIN BOARD:

15. Each Employer agrees to allow the Union the use of a bulletin board in the shop to be used for Union notices.

ARTICLE XIII

CHECK OFF:

16. Each Employer agrees that he will deduct from the salary of any present or future employees covered by this agreement once a month, out of the first salary payable in each month, the amount of Dues and Initiation fees the employee is required to pay the Union for the month. As to new employees, the Employer will deduct from their salaries such amounts as the Union will bill the Employer for the purpose hereinabove specified. Once a month, within one (1) week from the date of such deduction, the Employer will deliver the money billed and deducted to a duly authorized representative designated by the Union for that purpose. The Union agrees that as a condition to such deduction it will file and maintain with the Employer written authorization for such deduction for each employee from whom such deduction must be made. Such deductions shall be considered Trust Funds.

ARTICLE XIV

WORK STOPPAGE:

17. Where an unauthorized work stoppage or strike occurs, the Union will make immediate efforts to return its members to their respective jobs and shall request its members to cease any action which may effect production. Each employer in consideration of the performance by the Union of the aforesaid undertakings, absolves the Union, its officers or agents from liability by suit for damages for breach of contract, of any kind or character whatsoever. It is distinctly agreed and understood that the Union shall not be held liable for any unauthorized or outlaw strikes, or the individual acts or actions of any employees or employee. Nothing herein contained, however, shall be deemed to limit the rights of employers to enforce any legal claims which they may have against their employees.

ARTICLE XV

SAVINGS CLAUSE:

18. Should any part of this agreeement or portion therein contained be rendered or declared illegal, legally invalid or unenforceable by a Court of Competent Jurisdiction, or by the decision of any authorized Governmental agency, such invalidation of such part or portion of this agreement shall not invalidate the remaining portions thereof. In the event of such occurrence, the parties agree to meet immediately, and if possible, negotiate substitute provisions for such parts or portions rendered or declared illegal or invalid. Should the parties be unable to agree on substitute provisions, the matter shall be referred to arbitration as hereinafter provided. The remaining parts and provisions of this agreement shall remain in full force and effect.

ARTICLE XVI

SAFETY PROVISION AND PAYMENT FOR LOST TIME:

19. (A) Each Employer will make reasonable provisions for the safety and the health of its employees, and shall comply with all Federal, State and Municipal requirements for safeguards and cleanliness. Should a worker be injured on the job, he shall be paid for his entire day. Should he lose time thereafter the next day for treatment for injuries suffered while employed, he shall be paid for such lost time.

ARTICLE XVII

SAFETY COMMITTEE:

(B) A Safety and Health Committee is hereby established consisting of three (3) Employers designated by the Association, three (3)

Employees designated by the Union, and one (1) Union representative. The Committee shall meet at various times to consider health and safety requirements. A decision by the majority as to any Health and Safety regulations shall be binding upon the Employer. The Union representative shall vote only in case of a tie.

ARTICLE XVIII

TOOLS:

20. Each employee shall have the tools necessary to perform the duties of his classification.

ARTICLE XIX

PENSION FUND:

21. (A) Each Employer shall pay to the LOCAL 819 PENSION FUND E, the sum of three (3%) percent of wages and salary paid by the Employer to these employees who are covered by this agreement, up to 40 hours per week on the wage scale as set forth in this contract. Said contribution shall be made by the Employer by sending same to the Administrator of said Pension Fund, at his designated address, on each day on which payment is made to employees, a remittance equal to three (3%) percent of the amount of gross wages and salary by which is meant the amount due to employees before deduction of Withholding Taxes, F.I.C.A., or any other deduction; not to exceed 40 hours per week as aforementioned.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 PENSION FUND E, and shall be accompanied by duplicate copies of remittance report made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of Pension contributions, then and in such event, such failure on the part of the Employer shall constitute a breach of this Agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this collective bargaining agreement, but shall retain all rights thereunder, during the period that the Employer shall remain in default; and the Employer shall have no rights under this agreement so long as he remains in default, without, however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall remain personally responsible for payment of accrued Pension contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XX

WELFARE FUND:

22. (A) On each day on which an Employer shall pay wages to any employees covered by this agreement, the Employer shall remit to the LOCAL 819 WELFARE FUND E the sum of twenty-two (22 cents per hour for each hour for which he shall have paid said employees on said payday. Maximum contribution to the fund on the part of the Employer shall be one dollar and sixty eight ($1.68) per day. Said contribution shall be made by the Employer by sending the same, together with a fully executed remittance form, to the office of the Welfare Fund, in accordance with the instructions contained on the remittance form.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 WELFARE FUND E, and shall be accompanied by

duplicate copies of remittance report made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of Welfare contributions, then and in such event, such failure on the part of the Employer shall constitute a breach of this Agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this collective bargaining agreement, but shall retain all rights thereunder, during the period that the Employer shall remain in default: and the Employer shall have no rights under this agreement so long as he remains in default, without, however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall remain personally responsible for payment of accrued Pension contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XXI

ANNUITY FUND:

23. (A) Each Employer shall pay to the LOCAL 819 ANNUITY FUND E, the sum of One (1) dollar per day, for each employee that is covered by this agreement, and who is employed for any period of time during a day. Said contribution shall be made by the Employer, by sending the sum to the Administrator of said Annuity Fund, on said day on which wages or salary are paid to an employee.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 ANNUITY FUND E, and shall be accompanied by duplicate copies of remittance reports made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of annuity contributions, then, and in such event, such failure on the part of the Employer shall constitute a breach of this agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this Collective Bargaining Agreement, but shall retain all rights thereunder, during the period that the Employer shall remain in default; and the Employer shall have no rights under this Agreement so long as he remains in default, without, however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall remain personally responsible for the payment of all accrued Annuity Fund contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XXII

JOINT INDUSTRY FUND:

(A) The Employer shall pay to the Joint Industry Fund the sum of three quarters of one per cent (3/4 of 1%) of the gross base wages of its Employees for a Joint Industry Fund to develop and improve the educational qualifications of its Employees.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 JOINT INDUSTRY FUND E, and shall be accompanied by duplicate copies of remittance report made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of Welfare contributions, then, and in such event, such failure on the part of the Employer, shall constitute a breach of this

Agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this Collective Bargaining Agreement, but shall retain all rights thereunder during the period that the Employer shall remain in default; and the Employer shall have no rights under this agreement so long as he remains in default, without, however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall be personally responsible for the payment of all accrued Welfare Fund contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XXIII

TRUST FUNDS:

24. (A) All of the aforesaid contributions and payments required to be made by an Employer as and for Pension, Welfare, Annuity and Joint Industry contribution, shall be considered and/or deemed to be Trust Funds held by the Employer for the benefit of the Employee. Each Employer shall become a party to the respective Agreements and Trust Indentures with the same force and effect as though they had individually by these presents executed the same.

(B) Each Employer warrants and guarantees, that the names and payroll submitted on the various forms, as an for Pension, Welfare Annuity and Joint Industry Fund are correct. In the event it be established, that an Employer has omitted names of employees covered by this Agreement, and/or incorrectly sets forth the amounts of earnings, then and in such event, the Employer shall be responsible for reasonable costs and expenses, incurred by the Union and/or the

respective Funds, to establish the correct names and amounts earned by the employees covered under this Agreement.

(C) Upon failure of an Employer to permit an examination of his books and records pertaining to payroll and employees, the prior remittance sheets submitted by the Employer, may be introduced by the Union and/or Administrator of the respective Funds, so as to establish prima facie evidence of employees and payroll, at any arbitration proceeding or other action taken to enforce the rights of the Union and of the respective Funds, under the terms of this Agreement.

ARTICLE XXIV

GRIEVANCE COMMITTEE:

25. (A) Any dispute which may arise hereunder between an Employer and the Union, or any employee, shall be referred to a Grievance Committee. The Union shall regularly schedule representative to the Grievance Committee, so that one Union representative shall be prepared to sit on such Committee on each weekday night, except holidays. The Association shall schedule its members so that one member shall be prepared to sit as Association representative on each weekday night, except holidays. The two member Grievance Committee so established, shall meet in a room set aside by the Union for that purpose, and shall receive any grievances received by 2 P.M. of that day, and schedule a hearing thereon for that evening. Should notification of an adverse party by means of telephone be inadequate, the Grievance Committee shall notify the adverse party by telegram of the hearing to be so conducted, between the hours of 5 P.M. to 7:00 P.M.

(B) Should the Union and Employer representatives be agreed on the disposition of the grievance presented, then such determination shall be final and binding upon the parties, with the same force and effect as an arbitration award, pursuant to the laws of the State of New York, and a written determination shall be enforceable by judgment or otherwise as a valid decision of arbitration. The failure of a party to participate, after notice, shall not relieve him of the finality and binding effect of such determination by the Grievance Committee.

(C) Should the Grievance Committee not hear the grievance within forty-eight hours after presentation thereof, (excluding Saturdays, Sundays and holidays), or not render a determination within twenty-four hours after the hearing is concluded, or should the two members not agree on a determination of the grievance, then any complaints, disputes and grievances arising between the parties to this Agreement, involving questions of interpretation or application of any clause of this Agreement, or any act or conduct in relation thereto, directly or indirectly, shall be submitted for arbitration to the New York State Board of Mediation, one of whose staff members shall arbitrate the same. That in the event a staff member cannot be assigned to appear and determine, then, and in such event, a request shall be made to the New York State Board of Mediation, to designate a panel Arbitrator, who shall arbitrate the issues. The fee of the Arbitrator shall be paid as determined by the Arbitrator.

(D) Where a dispute is submitted for arbitration, as set forth herein, such action shall be considered a final and binding submission to arbitration by both parties hereto. Thereafter, should either of the parties fail to attend the hearing set by the Arbitrator, after due notice thereof, the Arbitrator shall be empowered to make a final decision and award. The decision of the Arbitrator shall be made in writing

and shall be final and binding upon both parties. As long as the Employer is not in default in complying with the decision of the Arbitrator, the Union shall not engage in any strike, picketing, boycott or walkout. As long as the Union is not in default in complying with the decision of the Arbitrator, the Employer shall not engage in any lockout.

ARTICLE XXV

ARBITRATION:

26. All controversies and disputes, relating to payment as and for any and all sums of money due under this Agreement, including but not limited to payment to the Pensions Fund, Welfare Fund, Annuity Fund and Joint Industry Fund E, are to be settled by arbitration in accordance with the procedure set out in this Article.

(A) The Employer as well as the Union, or the Administrator of the respective Fund, shall serve by registered mail, a Demand for Arbitration. Such a Demand shall set forth the issues involved, together with a date and time for the hearing of the arbitration. All hearings are to be held at the Union office, between the hours of 5:00 P.M. and 8:00 P.M., Monday through Thursday, unless mutually agreed upon in writing, at such other designated time or place.

(B) The Demand for Arbitration shall become effective on date of mailing, and shall specify a date nor earlier than fifteen (15) days from date of mailing, nor later than twenty-one (21) days from the said date of mailing. The date of registered mailing shall be conclusive proof of service of the Demand for Arbitration. Upon the failure of any party to accept the registered mail, either party shall then be entitled to mail the Demand for Arbitration by ordinary mail,

and execute an affidavit to that effect. The date of mailing the Demand for Arbitration by registered mail shall be deemed conclusive for all periods of computing time limitations.

(C) A copy of the Demand for Arbitration shall simultaneously be sent to the Association. Within (5) days from receipt of said Demand, the Association shall designate one of its members as its Arbitrator, and send said name to both parties. If the Union and/or the Administrator initiates the arbitration, within five (5) days after mailing of the Demand for Arbitration, it shall designate its Arbitrator, and send said name both to the Association and to the Employer. Both Arbitrators shall then meet to designate a third Arbitrator. Within twelve (12) days fromthe mailing of the Demand for Arbitration, if both the Association Arbitrator and the Union Arbitrator cannot agree upon a third Arbitrator, then and in such event, the issue will be submitted for arbitration to the New York State Board of Mediation, with a request that a Panel Arbitrator shall be designated, who shall arbitrate the same. In the event the New York State Board of Mediation will not take jurisdiction of the issues, and/or assign a Panel Arbitrator, then and in such event, the issue shall be submitted to the American Arbitration Association, as and for designation of an Arbitrator.

(D) If the matter is heard by the Union Arbitrator, the Association Arbitrator, and the third Arbitrator designated by both Arbitrators, then and in such event, the decision of the majority shall be binding. If heard by a Panel Arbitrator, as designated by the New York State Board of Mediation, and/or by an Arbitrator designated by the American Arbitration Association, then and in such event, there shall be but one Arbitrator, whose sole decision shall be final and binding. Where a dispute is submitted for arbitration, as set forth herein, such action shall be

considered a final and binding submission to arbitration by both parties hereto. Thereafter, should either of the parties fail to attend the hearing set by the Arbitrator and/or Arbitrators, after due notice thereof, the Arbitrator shall be empowered to make a final decision and award. The Decision of the Arbitrator and/or Arbitrators, shall be made in writing, and shall be final and binding upon both parties. As long as the Employer is not in default in complying with the decision of the Arbitrator and/or Arbitrators, the Union shall not engage in any strike, picketing, boycott or walkout. As long as the Union is not in default in complying with the decision of the Arbitrator and/or Arbitrators, the Employer shall not engage in any lockout. Any arbitration hearing held by a Panel Arbitrator designated by the New York State Board of Mediation, and/or an Arbitrator designated by the American Arbitration Association, shall be at such time and place as designated by the Arbitrator.

(E) It is expressly agreed and understood, that the Arbitrator shall be empowered to award counsel of the Union, and counsel of the respective Funds, a fee not exceeding twenty (20%) per cent of the total amount determined by the Arbitrator, to be due and owing to the Union and/or to the respective Funds.

(F) The fees of the respective arbitrators, with the exception of the Association and Union Arbitrator, shall be awarded by the Arbitrator hearing the issues.

ARTICLE XXVI

LEGAL ACTION:

29. (A) Each party to this Agreement hereby consents to and submits to the jurisdiction of the Supreme Court of the State of

New York, for the enforcement of any award resulting from arbitration conducted pursuant to this Agreement.

(B) The parties further agree that if an individual Employer bound by this Agreement, violates or breaches this Agreement in its entirety, or in such fashion so that the Union must commence legal proceeding to enforce such breach, then and in that event, such Employer shall be liable for all reasonable legal fees and disbursements incurred by the Union due to such breach. That any legal action shall be separate and apart from any of the arbitration proceedings heretofore set forth.

ARTICLE XXVII

JOINT INDUSTRY BOARD:

28. (A) The employees shall be classified by a Committee of the Joint Industry Board. In no event, however, shall an employer act upon the classification of his employees.

(B) The parties are in agreement that classification and/or reclassification of employees shall be the sole responsibility of the Joint Industry Board. This Board shall be made up of equal representatives of the Association and of representatives of the Union.

(C) The Administrator of the Joint Industry Board shall have the right to notify an employer, to direct any apprentice, in its employ to appear at the office of the Administrator. The Employer agrees, upon two hours' notice to notify and direct the apprentice to appear at the office of the Administrator. Such appearance, shall be at the expense of the apprentice, and the Employer need not make payment to the apprentice during said period of absence.

ARTICLE XXVIII

RESPONSIBILITY OF EMPLOYEE:

29. (A) The Employer agrees that he will not place any man other than a man classified as an "A" electrician, in charge of a job, with the exception of an adequate wiring job.

(B) In the event that the employee responsible for a particular electrical job shall perform his function in a faulty manner, said employee shall be responsible for redoing such job in a proper manner on his own time and without additional compensation.

ARTICLE XXIX

FARMING OUT EMPLOYEES:

30. The Association agrees that there will be no transferring or farming out of employees as between the members to detriment of unemployed unit members of the unit list of availability.

ARTICLE XXX

UNIFORMS:

31. If the Employer requires uniforms to be worn, same shall be supplied and paid for by the Employer. A limit of three (3) uniforms per year per man shall be in effect.

ARTICLE XXXI

WORKING EMPLOYER:

32. No Employer shall work if he employs more than three men.

ARTICLE XXXII

FOREMAN:

33. Any "A" man in charge of four (4) or more men, running a job, shall receive an additional twenty-five (.25) cents per hour above the "A" man's scale for the period of time during which he is in charge of four (4) or more men and running a job.

ARTICLE XXXIII

TRANSPORTATION PAY & COST:

34. The Association member Employers agree to furnish the employee with any transportation costs incurred by the employee outside of the City of New York, and to compute the amount of time worked by the employee from the minute he leaves the City of New York, to the time he arrives at the place of employment; upon submission of daily vouchers.

ARTICLE XXXIV

PAYMENT FOR LOST TOOLS:

35. The Employer shall be responsible for the loss of all tools which have been stolen from under lock and key and reported to the authorities.

ARTICLE XXXV

CONTRACT SURVIVAL:

36. (A) The loss of Membership by an Employer in the Association, in any fashion or manner, whether by act of the Employer, or by the Association, shall in no fashion or manner relieve the Employer of the obligations under this Agreement. All provisions shall remain

in full force and effect. In such event, the renewal terms of this Agreement shall be binding upon such Employer in his individual capacity.

(B) All contracts and agreements in force by and between the Union and any individual Employer on the effective date of this Agreement, or on the date such individual Employer becomes a member of the Association, shall be merged herein. All obligations outstanding on the date of merger, shall survive, and the individual employer shall be bound under the terms of said prior contract and Agreement notwithstanding the merger. Said prior contracts and Agreements to survive for the purpose of enforcement by the Union.

(C) This Agreement shall be binding upon the respective parties hereto, their successors and assigns, and shall survive any dissolution, mergers, re-organization, change of name, change of location, place of business, or otherwise. It is the intention of the parties, that no device, such as mergers, dissolution of partnerships, change of corporations, or corporate structure, transfer and/or sales of shares of stock, or change and/or amendment of operating entity, or otherwise, shall be used by any employer so as to avoid the provisons of this Agreement.

(D) Should the principals of any Employer engage in the business of operating additional or other electrical contracting businesses, directly or indirectly, under any other corporate, partnership or individual entity, then and in that event, such principals shall be personally responsible for the compliance by such other entity with all of the terms of this Agreement, with the same force and effect as though such other entity were a party hereto.

(E) Nothing herein contained, however, shall prohibit any principal from a bona fide entry into another firm which is subject to existing Collective Bargaining Agreement with another Union, providing that such Collective Bargaining Agreement shall have been in existence for over six months at the time of entry of the principal into the new firm, provided further, that such principal is not in default under any of the terms of this Agreement.

ARTICLE XXXVI

LAYOFF NOTIFICATION

37. Each employer undertakes to notify the Union in writing within 48 hours of any layoff, discharge, or voluntary termination of employment by an employee covered under this Agreement. The Union shall furnish necessary forms to be used by the Employer for this purpose. Failure of an Employer to timely notify the Union, shall render the Employer liable to the Union and to the respective Funds, for all sums of money based on the last weekly payroll period, from dates of layoff, discharge, or voluntary termination of employment, until date of notification.

ARTICLE XXXVII

ANTECEDENT RESPONSIBILITY:

38. (A) Any and all benefits accruing under the terms of the prior Agreement, dated the 15th day of November, 1967, shall remain in full force and effect, including but not limited to any prorated vacation pay.

(B) The interpretation and enforcement of this Agreement shall be governed by the laws of the State of New York.

ARTICLE XXXVIII

SUPPLEMENTAL INFORMATION:

39. There shall be no modification of this Agreement, except by a duly executed modification in writing.

ARTICLE XXXIX

WAGE SCALE:

40. Wage scale, pursuant to Agreement between United Construction Contractors Association, Inc., and Local 819 E International Brotherhood of Teamsters, as of November 15th, 1970.

NOVEMBER 15, 1970 to NOVEMBER 15, 1971

Apprentice		
First 6 months	-	2.25 per hour
6 months to one year	-	2.35 per hour
2nd year	-	2.75 per hour
3rd year	-	3.02 per hour
4th year	-	3.34 per hour
5th year	-	3.52 per hour
Mechanics M	-	3.93 per hour
A	-	4.50 per hour

NOVEMBER 15, 1971 to NOVEMBER 15, 1972

Apprentice		
First 6 months	-	2.43 per hour
6 months to one year	-	2.78 per hour
2nd year	-	2.97 per hour
3rd year	-	3.26 per hour

November 15, 1971 to November 15, 1972 (Continued)

Apprentice		
4th year	-	3.61 per hour
5th year	-	3.80 per hour
Mechanics M	-	4.24 per hour
A	-	4.86 per hour

NOVEMBER 15, 1972 to NOVEMBER 14, 1973

Apprentice		
First 6 months	-	2.62 per hour
6 months to one year	-	3.00 per hour
2nd year	-	3.21 per hour
3rd year	-	3.52 per hour
4th year	-	3.90 per hour
5th year	-	4.11 per hour
Mechanics M	-	4.50 per hour
A	-	5.25 per hour

IT IS EXPRESSLY AGREED AND UNDERSTOOD that the Employer shall pay a wage scale pursuant to the rules, regulations and requirements incorporated in public work contracts executed by the employee with any government or municipal authority or subdivision thereof and the public works contract shall supersede this agreement with respect to wages, conditions and hours. When required by contract in the City of New York, the following wage scale shall apply to the classification listed below:

Journeyman A $7.00 per hour

In the event of the Union's affiliation or merger with another Union Local, or another International or in event the Union changes

its name or is transferred to the jurisdiction of another region, the successor Union, assignee Union or the newly merged Union, shall assume in all respects the obligations under this Agreement and that the Union, as party to this Agreement shall make known in advance to the successor or assignee Union all the terms and conditions hereof, and the employer agrees to recognize such successor.

ARTICLE XXXX

EXPIRATION:

41. This Agreement shall expire on the 14th day of November, 1973, and shall be automatically renewed from year to year, thereafter, unless written notice of termination shall be given by either party by registered mail, sent not less than 60 nor more than 90 days prior to the said expiration date. Either party, may also, at any time not less than thirty (30) nor more than sixty (60) days prior to the expiration date, or any renewal expiration date, give written notice by registered mail of a desire to modify the provisions respecting hours of work, vacations, wages, pension, welfare and annuity contributions or other minima; such notice shall not act to terminate this Agreement, and should the parties be unable to agree on any such modification, then the same shall constitute a grievance to be determined as hereinabove set forth.

42. This Contract shall be retroactive to the termination date of any prior contract in existence between the Union and any Association Member.

LOCAL 819 E, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
By /s/ Michael Gordon, Bus. Rep.

UNITED CONSTRUCTION
CONTRACTORS ASSOCIATION, INC.
By /s/ Theodore Loschn
President

GENERAL COUNSEL'S EXHIBIT NO. 6(b)

[Dated 8/6/74] [D--9037
New York, N.Y.]

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED CONSTRUCTION CONTRACTORS ASSOCIATION

Employer

and Case 2--RC--16244

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL--CIO

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On April 12, 1974, the Board issued a Decision and Order in this proceeding,[1/] finding, inter alia, that a multiemployer bargaining unit was appropriate. However, because the identity of the members of the Association comprising the unit could not be ascertained from the record, the Board ordered the case remanded to Region 2 for further proceedings to determine the composition of the associationwide unit. Pursuant to that order, further hearing was held on May 3, 1974, before Hearing Officer Howard Shapiro at New York, New York. At the close of that hearing, and pursuant to Section 102.67 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 2 transferred the case

1/ United Construction Contractors Association, 210 NLRB No. 16 (1974).

to the Board for decision. Thereafter the Employer and the Petitioner filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.[2/]

Upon the entire record in this case, the Board finds:

The disagreement over the composition of the appropriate unit which existed at the time of the original hearing appears to have been resolved by the finding in our earlier decision that Tab Electric, Inc., had effectively withdrawn from the associationwide bargaining unit. The parties now appear to be in agreement that those members of the Employer whose names are listed on Board Exhibit 6, excluding Tab Electric, Inc., but including Alco Electric Co.,[3/] represent the membership at the time of the original hearing whose employees would belong in a multiemployer bargaining unit such as has been found appropriate. The record of the further hearing shows no change in the composition of such membership.

2/ Before and during the hearing, Employer raised the issue of Petitioner's qualification for certification, contending that Petitioner discriminates on the basis of sex and race. In an effort to pursue this issue, Employer served a subpoena duces tecum on Petitioner, requesting the production of certain documents relating to Petitioner's membership. The Hearing Officer granted Petitioner's motion to quash the subpoena. On the basis of the position taken by each of us in Bekins Moving & Storage Co. of Florida, Inc., 211 NLRB No. 7 (1974), we affirm this ruling.

3/ While the name of Alco Electric Co. does not appear on Board Exhibit 6, the parties agree to its inclusion.

In the circumstances and in accord with the parties' agreement on the composition of the unit as revealed by this record, we shall direct an election in the multiemployer bargaining unit heretofore found appropriate.[4/]

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not

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4/ The individual employers whose employees are included in the unit are: Able Electric Shop; Alco Electric Co.; Asco Maintenance Corp.; Atlas Reid Inc.; Cheltenham Electronics Corp.; D. T. & S. Construction Co., Inc.; Emm Electric Co., Inc.; Paul Guthertz, Inc.; I.K. Electric Inc.; J. K. Electric Corp.; Mercury Elec.; Robert J. Kelly Inc.; Konsker Construction Corp.; Pantel Contracting Corp.; A. Picoult; Ram Electrical Contr. & Ser. Co.; Rothstein & Hoffman Electric Ser.; Frank J. Roublich; Surf-Hunter Electric Co. Inc.; James F. Volpe Electric Co.; Zip Electric Co. Inc.; W. T. Hickey Corp.; Unity Electric; Damar Electric Corp.; Expert Electric Inc.; Five Star Electric Co.; Gary Electric; Grand Electric Ser., Corp.; Heller Electric Company; Hendrix Electric Inc.; K & T Electric Co., Inc.; L. F. Elec'l Contractors; M. J. R. Electric; Palermo Electric; Phase II Electric; See-Us Electric Co.; Seymour Elec. Serv. Inc.; S. G. Electric Co., Inc.; Spaceguard Electric; Russell Vensk, Inc.; Adequate Power & Heat Corp.; Alburdan Electric Co.; Argano Electric Corp.; Bixantz Electric Co., Inc.; AMS Electric; Bixson Electric Inc.; Robert E. Burden; Darby Electric Corp.; Eugene Iovene Inc.; H. K. Electric Co.; Jubilee Electric Corp.; Leone Electric Corp.; Raymor Electric Corp.; Surrey Electric Co.; Gilston Elec.; Hunts Point Elec. Wiring Ser.; LoBello Electric; Roberts Electric Co., Inc.; J. A. Tramantano; Trophy Electric Co., Inc.; Wickham Contrg.; Al-Wes Electric; S. Davis Corp.; Excello Electric; Jawitz Electric; John St. Electric Co., Inc.; Master Electric Co.; Lenco Elec. Serv., Inc.; Paul Mock, Inc.; Schneider Electric Co., Inc.; Hylan Electric Co., Inc.; A. C. Electric

Petitioner's contention that, upon a victory in the election in this unit, it ought to be certified as representative of the Association members individually, as well as for the group, has not merit.

later than 30 days from the date below. The Regional Director for Region 2 shall direct and supervise the election, subject to the National Labor Relations Board Rules, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[5/] Those eligible shall vote whether

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5/ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236; N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days of the date of this Supplemental Decision and Direction of Election. The Regional Director shall make this list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed

they desire to be represented for collective-bargaining purposes by Local Union No. 3, International Brotherhood of Electrical Workers, AFL--CIO, by Local 363, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or by none of the foregoing.

Dated, Washington, D.C., August 6, 1974.

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

National Labor Relations Board

(SEAL)

GENERAL COUNSEL'S EXHIBIT NO. 8

Board of Education of the City of New York

DIVISION OF SCHOOL BUILDINGS
28-11 Bridge Plaza North
Long Island City, N.Y. 11101
Telephone 361-7711

August 15, 1974

SUBJECT:

Gentlemen:

Under the terms of the above Contract with the Board of Education, you are required to perform and complete the work within the time specified therein.

This is to advise that the Board will hold you responsible for the full performance of your obligations in accordance with the terms of the Contract and will not grant you an extension of time in which to complete your work. In addition, you will be held liable for damages as a result of the delay caused by your current nonperformance.

Very truly yours,

HUGH McLAREN, JR.
Executive Director

HMcL/cs

CERTIFIED MAIL
R.R.R.

GENERAL COUNSEL'S EXHIBIT NO. 10

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SAMUEL M. KAYNARD, Regional Director of Region 29 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, Petitioner v. LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO Respondent	74 Civil 1259

ORDER GRANTING TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition of Samuel M. Kaynard, Regional Director of Region 29, of the National Labor Relations Board, for and on behalf of said Board, for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case, has made and filed its findings of fact and conclusions of law, finding and concluding that there is reasonable cause to believe that respondent has engaged in, and is engaging in, acts and conduction violation of Section 8(b)(4)(i)(ii)(B) and (D) of said Act, affecting commerce within the meaning of Section 2(6) and (7) of the said Act, and that such acts and conduct will likely be repeated or continued unless enjoined.

NOW, THEREFORE, upon the entire record, it is

ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation within it, or them be and they hereby are enjoined and restrained from:

Engaging in strikes, or work stoppages or threats thereof; or by any other means, including threats, orders, directions, instructions, requests, or appeals however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in or inducing or encouraging any individual employed by Pettinelli Electric Co. Inc., herein called Pettinelli, A.I. Smith Electrical Contractors Inc., herein called Smith, Petrocelli Electric Co. Inc., herein called Petrocelli, Herrick Electrical Contracting Co. Inc., herein called Herrick, Crescent Electrical Installation Corp., herein called Crescent, London Electrical Contractors, herein called London, R. Salzstein and Co., herein called Salzstein, Sheldon Electrical Contractors Co., herein called Sheldon, Theodore Kaish Inc., herein called Kaish, Litemore Electric Co., herein called Litemore, Hirsch Electric Co. Inc., herein called Hirsch, Boro Electric Installation Co., herein called Boro, Mulvihill Electrical Contracting Co., herein called Mulvihill, Heckler Electrical Co. Inc., herein called Heckler, or by any other contractor employed by the Board of Education of the City of New York, herein called the Board of Ed., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles,

materials, or commodities, or to perform any service, or in any manner or by any means, threatening, coercing or restraining Board of Ed., Pettinelli, Smith, Petrocelli, Herrick, Crescent, London, Salzstein, Sheldon, Kaish, Litemore, Hirsch, Boro, Mulvihill, Heckler, or any other contractor employed by the Board of Ed. or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is (1) to force or require Pettinelli, Smith, Petrocelli, Herrick, Crescent, London, Salzstein, Sheldon, Kaish, Litemore, Hirsch, Boro, Mulvihill, Heckler and other contractors employed by the Board of Ed. to cease doing business with the Board of Ed. or (2) to force or require the Board of Ed. to cease doing business with Eugene Iovine, Inc., herein called Iovine, Wickham Contracting Co., Inc., and Ralph Perone Joint Venturers, herein called W & P, or with any other person whose employees are not members of or represented by respondent, or (3) to force and require the Board of Ed., Iovine, W & P, and other persons whose employees are not members of or represented by respondent to assign the performance of electrical contracting work to employees who are members of or are represented by respondent rather than to employees who are members of or are represented by Local 363, I.B.T., a labor organization, or who are not members of or are represented by respondent.

IT IS FURTHER ORDERED that respondent issue instructions and directions to any and all members and employees who are employed by Pettinelli, Smith, Petrocelli, Herrick, Crescent, London, Salzstein, Sheldon, Kaish, Litemore, Hirsch, Boro, Mulvihill, Heckler, and other contractors employed to perform contracting at Board of Ed. job sites, to end their work stoppage

and strikes and to immediately return to work for their employers at said Board of Ed. job sites.

Dated at Brooklyn, New York this 13th day of September, 1974.

/s/ Edward Nelson
United States District Judge.

RESPONDENT'S EXHIBIT NO. 1

Local Union No. 3

International Brothernood of Electrical Workers
Of Greater New York and Vicinity

August 21, 1974

Mr. James F. Regan, President
Board of Education
110 Livingston Street
Brooklyn, New York 11201

Dear Sir:

Enclosed herewith please find suggested draft of agreement for the City of New York and/or Board of Education.

Very truly yours,

/s/ Thomas Van Arsdale
Thomas Van Arsdale
Business Manager

TVA:ebc
oeiu/153
Encl.

The City of New York recognizes that there is a workforce of skilled electricians who work for (or who are on layoff from work for) Electrical Contractors on construction jobs for the City of New York.

The City of New York further recognizes that these men have no assurance that they will be employed on future jobs for the City of New York.

The City of New York acknowledges that these men are entitled to some guarantees in regard to their future job security, to the extent that the City of New York will be awarding sub-contracts including work opportunity in their electrical trade.

The City of New York agrees to immediately establish a list of those men who are on layoff from these jobs, and to maintain a list of future layoffs in chronological order.

The City of New York agrees to specify in all future electrical sub-contracts that before any new men can be employed on those jobs, all men must be hired from the layoff list during such time as the layoff list continues to have men available.

EXHIBITS FROM CASE NO. 29-CB-1992

GENERAL COUNSEL'S EXHIBIT NO. 2

[Dated 4/12/74]

[D--8411
New York, N.Y.]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED CONSTRUCTION CONTRACTORS ASSOCIATION

Employer

and

Case 2--RC--16244

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held at New York, New York, before Hearing Officer Howard Shapiro. At the close of the hearing and pursuant to Section 102.67 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended the Regional Director for Region 2 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs. Petitioner has requested oral argument.[1/]

1/ Petitioner's request for oral argument is hereby denied. In our opinion, the briefs adequately present the issues and positions of the parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Employer is an association which represents member-employers engaged in providing electrical services for the purpose of collective bargaining with labor organizations. The Association and the Intervenor, Local 363, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, were parties to a collective-bargaining agreement which terminated on November 14, 1973. On August 17, 1973, Petitioner filed the petition in this case in which it sought a unit consisting of "[a]all employers bound by the existing agreement between Local # 363, IBT and United Construction Contractors Association as per attached list." The list appended to the petition contained the names and addresses of 118 companies. At the hearing, the Association introduced a list prepared by its attorney who testified that the Association's list,

rather than Petitioner's, was an accurate enumeration of the members. The Association's list indicated that of the 118 names found on the Petitioner's list, only approximately 48 were members of the Association. The attorney for the Association further testified that the Association's list was compiled from a collection of membership applications in his possession.[2/] During the course of the hearing, the Association made several amendments to this list in an effort to correct what its attorney described as certain "oversights."[3/]

The record compiled at the hearing sheds little light on the nature of the Association and its bargaining history. However, it has been established that the Association, on behalf of its members, and the Intervenor were parties to a collective-bargaining agreement which ran from November 15, 1970, to November 1, 1973. And Petitioner, the Association, and the Intervenor appear to be in agreement

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2/ Pursuant to a request made by Petitioner, the Board issued a subpoena duces tecum directing Al Picoult, a member of the Board of Directors of the Association, to produce certain books, records, and other documents which would disclose the actual membership of the Association. None of the requested material appears in the record of this case, although the Hearing Officer has indicated that Picoult provided Petitioner with the membership applications.

3/ The Association and Intervenor contend that the petition should be dismissed on the ground that Petitioner filed individual petitions in Region 29 as to approximately 30 members of the Association, and it refused to indicate its position as to which of the petitions was proper. The Association and Intervenor further joined in moving for dismissal on the ground that the petition was defective in that it describes the Association as being comprised of the names appearing on the "attached list," which it is not. However, these grounds, and others urged by the Association and Intervenor, do not justify dismissal of the petition, and the motions to dismiss are accordingly denied.

that a multiemployer unit is appropriate. Therefore, we find that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All electricians, electrical maintenance mechanics, helpers, and apprentices employed by the employer-members of the United Construction Contractors Association, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

However, the record does not provide sufficient information for us to determine with any accuracy the identity of the members of the Association. Thus, before directing an election herein, we shall remand this case to the region for further proceedings to determine the composition of the Association.

5. The parties are in disagreement as to whether Tab Electric, Inc., hereinafter referred to as Tab, has effectively withdrawn from the associationwide unit. By letter dated September 24, 1973, within the period set by the Association contract for modification, Tab advised the Association that it was withdrawing therefrom as of that date and that it would negotiate individually with the Intervenor in future contract negotiations. Later, at the hearing on October 16, 1973, before the terminal date of the Association contract, Tab's attorney affirmed that Tab continued to be bound by the terms and conditions of the collective-bargaining agreement until its termination on November 14, 1973.

Withdrawal by an employer from a multiemployer bargaining unit must be unequivocal and exercised at the appropriate time.[4/]

4/ Retail Associates, Inc., 120 NLRB 388, 395.

Tab's written notice of withdrawal was both unequivocal and timely, as it notified the Association of Tab's unconditional desire to withdraw from multiemployer bargaining and was given prior to the date set by the contract for modification. Thus, Tab's withdrawal was effective.

ORDER

It is hereby ordered that the above-entitled matter be, and it hereby is, remanded to the Regional Director for Region 2 for further proceedings to determine the composition of the associationwide unit.

In the event that the Regional Director determines that a further hearing is necessary to determine the composition of the association-wide unit,

IT IS FURTHER ORDERED that the hearing be reopened, before a hearing officer to be designated by the Regional Director, for the purpose of taking additional testimony to resolve the issue set forth above.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to the Regional Director for Region 2 for such action as he deems necessary and consistent with this Order.

Dated, Washington, D.C., April 12, 1974.

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member
National Labor Relations Board

(SEAL)

GENERAL COUNSEL'S EXHIBIT NO. 3

[Dated 8/6/74] [D--9037
New York, N.Y.]

* * * * *

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On April 12, 1974, the Board issued a Decision and Order in this proceeding,[1/] finding, inter alia, that a multiemployer bargaining unit was appropriate. However, because the identity of the members of the Association comprising the unit could not be ascertained from the record, the Board ordered the case remanded to Region 2 for further proceedings to determine the composition of the associationwide unit. Pursuant to that order, further hearing was held on May 3, 1974, before Hearing Officer Howard Shapiro at New York, New York. At the close of that hearing, and pursuant to Section 102.67 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 2 transferred the case to the Board for decision. Thereafter the Employer and the Petitioner filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.[2/]

1/ United Construction Contractors Association, 210 NLRB No. 16 (1974).

2/ Before and during the hearing, Employer raised the issue of Petitioner's qualification for certification, contending

Upon the entire record in this case, the Board finds:

The disagreement over the co mposition of the appropriate unit which existed at the time of the original hearing appears to have been resolved by the finding in our earlier decision that Tab Electric, Inc., had effectively withdrawn from the associationwide bargaining unit. The parties now appear to be in agreement that those members of the Employer whose names are listed on Board Exhibit 6, excluding Tab Electric, Inc., but including Alco Electric Co.,[3/] represent the membership at the time of the original hearing whose employees would belong in a multiemployer bargaining unit such as has been found appropriate. The record of the further hearing shows no change in the composition of such membership.

In the circumstances and in accord with the parties' agreement on the composition of the unit as revealed by this record, we shall direct an election in the multiemployer bargaining unit heretofore found appropriate.[4/]

2/ (Continued) that Petitioner discriminates on the basis of sex and race. In an effort to pursue this issue, Employer served a subpoena duces tecum on Petitioner, requesting the production of certain documents relating to Petitioner's membership. The Hearing Officer granted Petitioner's motion to quash the subpoena. On the basis of the position taken by each of us in Bekins Moving & Storage Co. of Florida, Inc., 211 NLRB No. 7 (1974), we affirm this ruling.

3/ While the name of Alco Electric Co. does not appear on Board Exhibit 6, the parties agree to its inclusion.

4/ The individual employers whose employees are included in the unit are: Able Electric Shop; Alco Electric Co.; Asco Maintenance Corp.; Atlas Reid Inc.; Cheltenham Electronics Corp.; D. T. & S. Construction Co., Inc.; Emm Electric Co., Inc.; Paul Guthertz, Inc.; I.K. Electric Inc.; J. K. Electric; Joseph P. Tuzzolo Co. Inc.; K L M Electric Contr. Inc.; Kingsway Electric Corp.; Mercury Elec.; Robert J. Kelly

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for Region 2 shall direct and supervise the election, subject to the National Labor Relations Board Rules, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees

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4/ (Continued) Inc.; Konsker Construction Corp.; Pantel Contracting Corp.; A. Picoult; Ram Electrical Contr. & Ser. Co.; Rothstein & Hoffman Electric Ser.; Frank J. Roublich; Surf-Hunter Electric Co. Inc.; James F. Volpe Electric Co.; Zip Electric Co. Inc.; W. T. Hickey Corp.; Unity Electric; Damar Electric Corp.; Expert Electric Inc.; Five Star Electric Co.; Gary Electric; Grand Electric Ser., Corp.; Heller Electric Company; Hendrix Electric Inc.; K & T Electric Co., Inc.; L. F. Elec'l Contractors; M. J. R. Electric; Palermo Electric; Phase II Electric; See-Us Electric Co.; Seymour Elec. Serv. Inc.; S. G. Electric Co., Inc.; Spaceguard Electric; Russell Vensk, Inc.; Adequate Power & Heat Corp.; Alburdan Electric Co.; Argano Electric Corp.; Bisantz Electric Co., Inc.; AMS Electric; Bixson Electric Inc.; Robert E. Burden Darby Electric Corp.; Eugene Iovene Inc.; H. K. Electric Co.; Jubilee Electric Corp.; Leone Electric Corp.; Raymor Electric Corp.; Surrey Electric Co.; Gilston Elec.; Hunts Point Elec. Wiring Ser.; LoBello Electric; Roberts Electric Co., Inc.; J. A. Tramantano; Trophy Electric Co., Inc.; Wickham Contrg.; Al-Wes Electric; S. Davis Corp.; Excello Electric; Jawitz Electric; John St. Electric Co., Inc.; Master Electric Co.; Lenco Elec. Serv., Inc.; Paul Mock, Inc.; Schneider Electric Co., Inc.; Hylan Electric Co., Inc.; A. C. Electric.

Petitioner's contention that, upon a victory in the election in this unit, it ought to be certified as representative of the Association members individually, as well as for the group, has no merit.

engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[5/] Those eligible shall vote whether they desire to be represented for collective-bargaining purposes by Local Union No. 3, International Brotherhood of Electrical Workers, AFL--CIO, by Local 363, International

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5/ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236; N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days of the date of this Supplemental Decision and Direction of Election. The Regional Director shall make this list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or by none of the foregoing.

Dated, Washington, D.C., August 6, 1974.

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

National Labor Relations Board

(SEAL)

GENERAL COUNSEL'S EXHIBIT NO. 4

AGREEMENT, made this 14th day of November, 1970 by and between UNITED CONSTRUCTION CONTRACTORS ASSOCIATION, INC., hereinafter designated and referred to as the "ASSOCIATION"; and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 819, hereinafter referred to as the "UNION."

WITNESSETH:

WHEREAS, the UNION maintains contractural relations with the members of the ASSOCIATION, pursuant to Collective Bargaining Agreements; and

WHEREAS, the parties are desirous of entering into an agreement relating to conditions of employment of the employees of the members of the ASSOCIATION, so that there may be harmonious cooperation between the employers and their employees, and so that there may be uniform conditions and terms of employment in the Electrical Contracting Industry, in which industry members of the ASSOCIATION are engaged as employers:

NOW THEREFOR, IT IS AGREED AS FOLLOWS:

ARTICLE I

RECOGNITION:

1. The ASSOCIATION agrees, on behalf of its present and future members who are in the Electrical Contracting Industry, to comply with the provisions of this agreement.

2. THE ASSOCIATION, on behalf of itself and its members acknowledges that the UNION represents a majority of the workers employed in the ASSOCIATION-WIDE unit consisting of the workers

covered by this agreement employed by the respective members of the Association, and has been designated by said electrical workers as their sole and exclusive collective bargaining representative. The ASSOCIATION, on behalf of itself and its present and future members, agrees to recognize the UNION during the entire period of this agreement, as the sole and exclusive collective bargaining representative of the workers, covered by this agreement. It is further agreed, that neither the ASSOCIATION nor any of its members, nor any of their respective agents, shall, directly or indirectly, discourage membership in the UNION.

3. The ASSOCIATION agrees that each member of the ASSOCIATION, as a condition for membership (or continued membership) in the ASSOCIATION, shall execute a membership application which shall contain the following provision:

> "We agree to be bound by, and to comply with the terms of any agreement now existing or which may hereafter be entered into between the ASSOCIATION and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 819, with the same force and effect as though we had by these present executed the same as a party."

A duplicate original of the membership application shall be sent to the UNION by the ASSOCIATION within five (5) days after its execution by a member.

4. All workers employed by the members of the ASSOCIATION in connection with any and all operations involved in their business, with the exception of non-electrical workers, non-working supervisors, plant guards, and office help shall be covered by this agreement. As a condition of their further employment, all such workers shall become

and remain members of the UNION, in good standing, at the end of their respective trial periods herein provided. All employees covered by this agreement shall thereafter remain members of this UNION as a condition of their employment.

ARTICLE II

UNION SECURITY:

5. Each employee covered by this agreement shall become a member of the UNION after the seventh (7th) day following the beginning of such employment, or the effective date of this agreement, whichever is later. Each employer shall apply for all new electrical workers he requires through the UNION. Should the UNION be unable to provide a worker satisfactory to the Employer within forty-eight hours after the mailing of a written request therefor, then the Employer shall be free to procure such workers from other sources. However, each employer shall require every worker to present, not later than one day after he is employed, a working card issued to him by the UNION directing him, for work, to the Employer; and the Employer agrees not to continue the employment of any worker who shall not procure such card. The UNION agrees to issue such cards to all workers, without any discrimination whatsoever, and without any requirement that such worker be a member of the UNION. Any Contractor who hires UNION employees, without calling upon the UNION pursuant to the agreement, or who hires non-union men, who do not have or apply for working cards from the UNION with the prescribed time, shall have effected a breach of this agreement in its very essence.

ARTICLE III

HOURS OF WORK & WAGES:

6. A week's work shall consist of Thirty Five (35) hours, divided into Five (5) days of Seven (7) hours each, performed between the hours of Eight (8) A.M. and Six (6) P.M., from Monday through Friday of each week. Time and one-half shall be paid for all work on Saturday. Double time shall be paid for all work on Sundays and double time plus holiday pay shall be paid for work on the paid holidays hereinafter listed. Time and one-half shall be paid after Seven (7) hours on each regular working day. On any regular working day the eighth hour is guaranteed or a maximum of Five (5) hours per week. At the option of the employer and employee may be required to work up to two hours overtime in any one working day. The employee may not be required to work more than two hours overtime on any work day. Wages shall be paid once a week for all work done prior to the date of payment. Weekly wages shall be paid in cash unless the employer secures a permit from the Department of Labor to pay by check. Payment of wages shall be on Company time. Should any employee be required to work after 6 P.M. on any day, then any hour or fraction thereof of such work performed after 6 P.M. and before 12 Midnight, shall be paid for at the rate of one and one-half times regular pay; any work performed between 12 Midnight and 8 A.M., shall be paid for at the rate of two times regular pay. However, in the event such employee shall be regularly employed to work a shift between the hours of 6 P.M., and midnight, his rate of pay shall be the same as the ordinary rate of pay, performed between the hours of 8 A.M. and 6 P.M., from Monday through Friday of each week, plus additional compensation in the amount of Eight (8%) per cent of the normal hourly wage. In the event such employee shall be regularly employed to work a shift between the hours of Midnight and 8 A.M., his rate of pay shall be the same as the ordinary rate of pay performed between

the hours of 8 A.M. and 6 P.M., from Monday through Friday of each week, plus additional compensation in the amount of twelve (12%) per cent of the normal hourly wage. Wages shall be at the rate set forth on the schedule annexed to anf forming a part hereof. Any employee called to work on a shift, shall in no event receive less than four hours pay.

ARTICLE IV

HOLIDAYS

7. Each Employer shall allow all electrical employees the following Holidays with pay, regardless of the day of the week on which the Holiday falls.

1.	New Years Day	5.	Independence Day
2.	Washington's Birthday	6.	Labor Day
3.	Decoration Day	7.	Thanksgiving Day
4.	Day After Thanksgiving	8.	Christmas

Should any of the aforementioned Holidays fall within the seven (7) day period referred to herein in Paragraph "5", the employee shall receive pay for such Holiday after the aforesaid (7) day period has been completely worked. All laid-off employees receive Holiday pay for the aforementioned Holidays only if they have worked at any time within five working days before or after the Holiday. All employees not laid off within five (5) working days before or after the Holiday, are required to work the day before and the day after the Holiday, if such days are working days, in order to be entitled to receive Holiday pay. Holiday pay shall be paid for work on holidays hereinabove set forth.

ARTICLE V

VACATION:

8. Paid vacation shall be given on a pro-rata basis at least once a year, or at the time of final termination of the Employer-employee relationship, whichever shall occur first, as follows:

Four per cent of base pay per annum shall be paid to any employee working three (3) days of continuous employment to qualify for vacation pay, should there be a termination of their employment.

A. The employer agrees that he will give all employees paid vacations at any time during the calendar year which is mutually agreeable to the Employee until such payment is due to the employee.

B. The UNION is granted an option to establish a Vacation Plan. If such Vacation Plan is created, the UNION shall serve written notice to the ASSOCIATION, setting forth the procedures for remittance of vacation pay by the Employers.

ARTICLE VI

DISCHARGE CLAUSE:

9. (A) After an Employee shall have been employed for 28 days, no employer shall have any right to immediate discharge, except for DISHONESTY, DRUNKENNESS, or ASSAULT.

Immediately upon discharge, he shall notify the Union, in writing by registered mail of the alleged reasons therefor. Should the Union challenge the discharge within twenty-four (24) hours after receipt of such notice, and in the event the matter cannot be adjusted between the parties, it shall be a grievance to be settled as hereinafter provided. Should the employee be found innocent of the charge, he shall be reinstated immediately, with pay from the date of discharge.

(B) Should an Employer have a grievance or complaint other than for reasons set forth hereinabove, he shall notify the Union in writing by Registered Mail of his complaint. If the parties cannot adjust same, it shall be a grievance to be adjusted as hereinafter provided. In no event however, is the employee to be discharged or dismissed from the premises until after the decision by the grievance committee.

ARTICLE VII

DISCRIMINATION:

10. There shall be no discrimination of any kind against any member of the Union for: Union activity, Race, Color, Creed, or Nationality, by the Employer or anyone in his employ.

ARTICLE VIII

MODIFICATION:

11. Neither the Association, or any Employer nor an individual worker or group of workers will have the right to modify or waive any of the provisions of this agreement. No Employer will enter into any individual agreements or arrangements with any of its employees covered by this agreement.

ARTICLE IX

SHOP STEWARD:

12. The Union shall have the right to establish a Shop Steward in each shop covered by this agreement. Such Shop Steward shall have the right to take up with a Representative of the Employers all grievances arising out of this agreement. The Shop Steward shall have superseniority.

ARTICLE X

REDUCTION OF WAGES:

13. Nothing in any provision of this agreement shall be so construed, anything to the contrary notwithstanding, as to effect a reduction in wage rate of any worker, or increase the number of hours per week which the worker shall be compelled to work in order to earn his present weekly wage.

ARTICLE XI

EXAMINATION OF BOOKS & RECORDS:

14. The Union shall have a right to examine books and records of any Employer, to determine the days of employment, hours and wages paid to its employees. The Union, shall give the employer reasonable notice, personally, by telephone, by mail, and/or by telegram, of its intention to examine the books and records, stating the date and time that the examination shall take place. Unless otherwise stated, as hereinafter set forth, said examination shall take place at the employers place of business, during reasonable business hours.

(A) If such notice is served by telegram or by certified mail, the Union shall give the Employer a minimum of seven (7) days notice, from the date of sending said communication, as to the date, and time of examination. In the event the employer cannot keep the appointment, and requests an adjournment of this examination, said adjournment shall be secured by use of a telegram and/or certified mail, which shall be sent no later than three (3) days prior to the date of the scheduled examination.

(B) The employer shall be liable to a maximum sum of fifty (50) dollars, as and for damages and or expenses, incurred by the union, in sending an accountant, and/or an employee, or both, to the employers place of business, and not being afforded an opportunity to hold the examination. This shall apply in such situation wherein the employer has not adjourned the scheduled examination. It being intended, that the union shall not make needless trips and incur expenses, in attempting to conduct an examination of the employers books and records.

(C) In the event an employer fails to permit an examination of his books and records, and/or adjourns, cancels or otherwise delays an examination for a period in excess of three (3) weeks from the date of first notice of intention given by the union, the books and records shall thereafter be examined at the offices of the union.

(D) The books and records required to be produced by an employer, shall be limited to those books and records relevant to wages and hours, as well as any forms submitted by the employer to the Internal Revenue Service, as and for deductions made by the employer relating to payments as and for the Pension Fund E, Welfare Fund E, Annuity E, and Joint Industry Fund E.

(E) In the event an arbitration proceeding shall be had, as hereinafter set forth, the employer shall produce all of the relevant books and records pertaining to the arbitration proceeding.

(F) Nothing in this contract shall be interpreted so as to prohibit the right of any Union Representative to visit the shop or site during business hours.

(G) The failure by the employer, to permit the examination of his books and records, shall be deemed to be a material breach of

this agreement. Said breach shall in no fashion or manner relieve the employer from any and all responsibilities and liabilities pursuant to the terms of this Agreement. The union shall in no effect or manner be deprived in any of its rights and remedies hereunder.

ARTICLE XII

BULLETIN BOARD:

15. Each Employer agrees to allow the Union the use of a bulletin board in the shop to be used for Union notices.

ARTICLE XIII

CHECK OFF:

16. Each Employer agrees that he will deduct from the salary of any present or future employees covered by this agreement once a month, out of the first salary payable in each month, the amount of Dues and Initiation fees the employee is required to pay the Union for the month. As to new employees, the Employer will deduct from their salaries such amounts as the Union will bill the Employer for the purpose hereinabove specified. Once a month, within one (1) week from the date of such deduction, the Employer will deliver the money billed and deducted to a duly authorized representative designated by the Union for that purpose. The Union agrees that as a condition to such deduction it will file and maintain with the Employer written authorization for such deduction for each employee from whom such deduction must be made. Such deductions shall be considered Trust Funds.

ARTICLE XIV

WORK STOPPAGE:

17. Where an unauthorized work stoppage or strike occurs, the Union will make immediate efforts to return its members to their respective jobs and shall request its members to cease any action which may effect production. Each employer in consideration of the performance by the Union of the aforesaid undertakings, absolves the Union, its officers or agents from liability by suit for damages for breach of contract, of any kind or character whatsoever. It is distinctly agreed and understood that the Union shall not be held liable for any unauthorized or outlaw strikes, or the individual acts or actions of any employees or employee. Nothing herein contained, however, shall be deemed to limit the rights of employers to enforce any legal claims which they may have against their employees.

ARTICLE XV

SAVINGS CLAUSE:

18. Should any part of this agreement or portion therein contained be rendered or declared illegal, legally invalid or unenforceable by a Court of Competent Jurisdiction, or by the decision of any authorized Governmental agency, such invalidation of such part or portion of this agreement shall not invalidate the remaining portions thereof. In the event of such occurrence, the parties agree to meet immediately, and if possible, negotiate substitute provisions for such parts or portions rendered or declared illegal or invalid. Should the parties be unable to agree on substitute provisions, the matter shall be referred to arbitration as hereinafter provided. The remaining parts and provisions of this agreement shall remain in full force and effect.

ARTICLE XVI

SAFETY PROVISION AND PAYMENT FOR LOST TIME:

19. (A) Each Employer will make reasonable provisions for the safety and the health of its employees, and shall comply with all Federal, State and Municipal requirements for safeguards and cleanliness. Should a worker be injured on the job, he shall be paid for his entire day. Should he lose time thereafter the next day for treatment for injuries suffered while employed, he shall be paid for such lost time.

ARTICLE XVII

SAFETY COMMITTEE:

(B) A Safety and Health Committee is hereby established consisting of three (3) Employers designated by the Association, three (3) Employees designated by the Union, and one (1) Union representative. The Committee shall meet at various times to consider health and safety requirements. A decision by the majority as to any Health and Safety regulations shall be binding upon the Employer. The Union representative shall vote only in case of a tie.

ARTICLE XVIII

TOOLS:

20. Each employee shall have the tools necessary to perform the duties of his classification.

ARTICLE XIX

PENSION FUND:

21. (A) Each Employer shall pay to the LOCAL 819 PENSION FUND E, the sum of three (3%) percent of wages and salary paid by the Employer to these employees who are covered by this agreement,

up to 40 hours per week on the wage scale as set forth in this contract. Said contribution shall be made by the Employer by sending same to the Administrator of said Pension Fund, at his designated address, on each day on which payment is made to employees, a remittance equal to three (3%) percent of the amount of gross wages and salary by which is meant the amount due to employees before deduction of Withholding Taxes, F.I.C.A., or any other deduction; not to exceed 40 hours per week as aforementioned.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 PENSION FUND E, and shall be accompanied by duplicate copies of remittance report made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of Pension contributions, then and in such event, such failure on the part of the Employer shall constitute a breach of this Agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this collective bargaining agreement, but shall retain all rights thereunder, during the period that the Employer shall remain in default; and the Employer shall have no rights under this agreement so long as he remains in default, without, however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall remain personally responsible for payment of accrued Pension contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XX

WELFARE FUND:

22. (A) On each day on which an Employer shall pay wages to any employees covered by this agreeme and the Employer shall remit to the LOCAL 819 WELFARE FUND E the sum of twenty-two (22 cents per hour for each hour for which he shall have paid said employees on said payday. Maximum contribution to the fund on the part of the Employer shall be one dollar and sixty eight ($1.68) per day. Said contribution shall be made by the Employer by sending the same, together with a fully executed remittance form, to the office of the Welfare Fund, in accordance with the instructions contained on the remittance form.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 WELFARE FUND E, and shall be accompanied by duplicate copies of remittance report made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of Welfare contributions, then and in such event, such failure on the part of the Employer shall constitute a breach of this Agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this collective bargaining agreement, but shall retain all rights thereunder, during the period that the Employer shall remain in default: and the Employer shall have no rights under this agreement so long as he remains in default, without, however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall remain personally responsible for payment of accrued Pension contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XXI

ANNUITY FUND:

23. (A) Each Employer shall pay to the LOCAL 819 ANNUITY FUND E, the sum of One (1) dollar per day, for each employee that is covered by this agreement, and who is employed for any period of time during a day. Said contribution shall be made by the Employer, by sending the sum to the Administrator of said Annuity Fund, on said day on which wages or salary are paid to an employee.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 ANNUITY FUND E, and shall be accompanied by duplicate copies of remittance reports made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of annuity contributions, then, and in such event, such failure on the part of the Employer shall constitute a breach of this agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this Collective Bargaining Agreement, but shall retain all rights thereunder, during the period that the Employer shall remain in default; and the Employer shall have no rights under this Agreement so long as he remains in default, without, however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall remain personally responsible for the payment of all accrued Annuity Fund contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XXII

JOINT INDUSTRY FUND:

(A) The Employer shall pay to the Joint Industry Fund the sum of three quarters of one per cent (3/4 of 1%) of the gross base wages of its Employees for a Joint Industry Fund to develop and improve the educational qualifications of its Employees.

(B) The aforementioned remittance shall be made to the order of LOCAL 819 JOINT INDUSTRY FUND E, and shall be accompanied by duplicate copies of remittance report made in accordance with a form to be given the Employer by the Fund.

(C) Should any Employer be in default in making the required remittance of Welfare contributions, then, and in such event, such failure on the part of the Employer, shall constitute a breach of this Agreement by the Employer, and the Union shall be relieved in respect to such Employer of all obligations under this Collective Bargaining Agreement, but shall retain all rights thereunder during the period that the Employer shall remain in default; and the Employer shall have no rights under this agreement so long as he remains in default, without however, depriving the Union of any of its rights and remedies hereunder.

(D) The Stockholders and Directors of any corporate Employer shall be personally responsible for the payment of all accrued Welfare Fund contributions, with the same force and effect as though they had personally guaranteed payment thereof as additional wages.

ARTICLE XXIII

TRUST FUNDS:

24. (A) All of the aforesaid contributions and payments required to be made by an Employer as and for Pension, Welfare, Annuity and Joint Industry contribution, shall be considered and/or

deemed to be Trust Funds held by the Employer for the benefit of the Employee. Each Employer shall become a party to the respective Agreements and Trust Indentures with the same force and effect as though they had individually by these presents executed the same.

(B) Each Employer warrants and guarantees, that the names and payroll submitted on the various forms, as an for Pension, Welfare Annuity and Joint Industry Fund are correct. In the event it be established, that an Employer has omitted names of employees covered by this Agreement, and/or incorrectly sets forth the amounts of earnings, then and in such event, the Employer shall be responsible for reasonable costs and expenses, incurred by the Union and/or the respective Funds, to establish the correct names and amounts earned by the employees covered under this Agreement.

(C) Upon failure of an Employer to permit an examination of his books and records pertaining to payroll and employees, the prior remittance sheets submitted by the Employer, may be introduced by the Union and/or Administrator of the respective Funds, so as to establish prima facie evidence of employees and payroll, at any arbitration proceeding or other action taken to enforce the rights of the Union and of the respective Funds, under the terms of this Agreement.

ARTICLE XXIV

GRIEVANCE COMMITTEE:

25. (A) Any dispute which may arise hereunder between an Employer and the Union, or any employee, shall be referred to a Grievance Committee. The Union shall regularly schedule representative to the Grievance Committee, so that one Union representative

shall be prepared to sit on such Committee on each weekday night, except holidays. The Association shall schedule its members so that one member shall be prepared to sit as Association representative on each weekday night, except holidays. The two member Grievance Committee so established, shall meet in a room set aside by the Union for that purpose, and shall receive any grievances received by 2 P.M. of that day, and schedule a hearing thereon for that evening. Should notification of an adverse party by means of telephone be inadequate, the Grievance Committee shall notify the adverse party by telegram of the hearing to be so conducted, between the hours of 5 P.M. to 7:00 P.M.

(B) Should the Union and Employer representatives be agreed on the disposition of the grievance presented, then such determination shall be final and binding upon the parties, with the same force and effect as an arbitration award, pursuant to the laws of the State of New York, and a written determination shall be enforceable by judgment or otherwise as a valid decision of arbitration. The failure of a party to participate, after notice, shall not relieve him of the finality and binding effect of such determination by the Grievance Committee.

(C) Should the Grievance Committee not hear the grievance within forty-eight hours after presentation thereof, (excluding Saturdays, Sundays and holidays), or not render a determination within twenty-four hours after the hearing is concluded, or should the two members not agree on a determination of the grievance, then any complaints, disputes and grievances arising between the parties to this Agreement, involving questions of interpretation or application of any clause of this Agreement, or any act or conduct in relation thereto, directly or indirectly, shall be submitted for arbitration to the New York State Board of Mediation, one of whose staff members

shall arbitrate the same. That in the event a staff member cannot be assigned to appear and determine, then, and in such event, a request shall be made to the New York State Board of Mediation, to designate a panel Arbitrator, who shall arbitrate the issues. The fee of the Arbitrator shall be paid as determined by the Arbitrator.

(D) Where a dispute is submitted for arbitration, as set forth herein, such action shall be considered a final and binding submission to arbitration by both parties hereto. Thereafter, should either of the parties fail to attend the hearing set by the Arbitrator, after due notice thereof, the Arbitrator shall be empowered to make a final decision and award. The decision of the Arbitrator shall be made in writing and shall be final and binding upon both parties. As long as the Employer is not in default in complying with the decision of the Arbitrator the Union shall not engage in any strike, picketing, boycott or walkout. As long as the Union is not in default in complying with the decision of the Arbitrator, the Employer shall not engage in any lockout.

ARTICLE XXV

ARBITRATION:

26. All controversies and disputes, relating to payment as and for any and all sums of money due under this Agreement, including but not limited to payment to the Pensions Fund, Welfare Fund, Annuity Fund and Joint Industry Fund E, are to be settled by arbitration in accordance with the procedure set out in this Article.

(A) The Employer as well as the Union, or the Administrator of the respective Fund, shall serve by registered mail, a Demand for Arbitration. Such a Demand shall set forth the issues involved,

together with a date and time for the hearing of the arbitration. All hearings are to be held at the Union office, between the hours of 5:00 P.M. and 8:00 P.M., Monday through Thursday, unless mutually agreed upon in writing, at such other designated time or place.

(B) The Demand for Arbitration shall become effective on date of mailing. and shall specify a date not earlier than fifteen (15) days from date of mailing, nor later than twenty-one (21) days from said date of mailing. The date of registered mailing shall be conclusive proof of service of the Demand for Arbitration. Upon the failure of any party to accept the registered mail, either party shall then be entitled to mail the Demand for Arbitration by ordinary mail, and execute an affidavit to that effect. The date of mailing the Demand for Arbitration by registered mail shall be deemed conclusive for all period of computing time limitations.

(C) A copy of the Demand for Arbitration shall simultaneously be sent to the Association. Within (5) days from receipt of said Demand, the Association shall designate one of its members as its Arbitrator, and send said name to both parties. If the Union and/or the Administrator initiates the arbitration, within five (5) days after mailing of the Demand for Arbitration, it shall designate its Arbitrator, and send said name both to the Association and to the Employer. Both Arbitrators shall then meet to designate a third Arbitrator. Within twelve (12) days from the mailing of the Demand for Arbitration, if both the Association Arbitrator and the Union Arbitrator cannot agree upon a third Arbitrator, then and in such event, the issue will be submitted for arbitration to the New York State Board of Mediation, with a request that a Panel Arbitrator shall be designated, who shall arbitrate the same. In the event the New York State Board of Mediation will not take jurisdiction of the issues, and/or assign a Panel Arbitrator,

then and in such event, the issue shall be submitted to the American Arbitration Association, as and for designation of an Arbitrator.

(D) If the matter is heard by the Union Arbitrator, the Association Arbitrator, and the third Arbitrator designated by both Arbitrators, then and in such event, the decision of the majority shall be binding. If heard by a Panel Arbitrator, as designated by the New York State Board of Mediation, and/or by an Arbitrator designated by the American Arbitration Association, then and in such event, there shall be but one Arbitrator, whose sole decision shall be final and binding. Where a dispute is submitted for arbitration, as set forth herein, such action shall be considered a final and binding submission to arbitration by both parties hereto. Thereafter, should either of the parties fail to attend the hearing set by the Arbitrator and/or Arbitrators, after due notice thereof, the Arbitrator shall be empowered to make a final decision and award. The Decision of the Arbitrator and/or Arbitrators, shall be made in writing, and shall be final and binding upon both parties. As long as the Employer is not in default in complying with the decision of the Arbitrator and/or Arbitrators, the Union shall not engage in any strike, picketing, boycott or walkout. As long as the Union is not in default in complying with the decision of the Arbitrator and/or Arbitrators, the Employer shall not engage in any lockout. Any arbitration hearing held by a Panel Arbitrator designated by the New York State Board of Mediation, and/or an Arbitrator designated by the American Arbitration Association, shall be at such time and place as designated by the Arbitrator.

(E) It is expressly agreed and understood, that the Arbitrator shall be empowered to award counsel of the Union, and counsel of the respective Funds, a fee not exceeding twenty (20%) per cent of the total amount determined by the Arbitrator, to be due and owing to the Union and/or to the respective Funds.

(F) The fees of the respective arbitrators, with the exception of the Association and Union Arbitrator, shall be awarded by the Arbitrator hearing the issues.

ARTICLE XXVI

LEGAL ACTION:

27. (A) Each party to this Agreement hereby consents to and submits to the jurisdiction of the Supreme Court of the State of New York, for the enforcement of any award resulting from arbitration conducted pursuant to this Agreement.

(B) The parties further agree that if an individual Employer bound by this Agreement, violates or breaches this Agreement in its entirety, or in such fashion so that the Union must commence legal proceeding to enforce such breach, then and in that event, such Employer shall be liable for all reasonable legal fees and disbursements incurred by the Union due to such breach. That any legal action shall be separate and apart from any of the arbitration proceedings heretofore set forth.

ARTICLE XXVII

JOINT INDUSTRY BOARD:

28. (A) The employees shall be classified by a Committee of the Joint Industry Board. In no event, however, shall an employer act upon the classification of his employees.

(B) The parties are in agreement that classification and/or reclassification of employees shall be the sole responsibility of the Joint Industry Board. This Board shall be made up of equal representatives of the Association and of representatives of the Union.

(C) The Administrator of the Joint Industry Board shall have the right to notify an employer, to direct any apprentice, in its employ to appear at the office of the Administrator. The Employer agrees, upon two hours' notice to notify and direct the apprentice to appear at the office of the Administrator. Such appearance, shall be at the expense of the apprentice, and the Employer need not make payment to the apprentice during said period of absence.

ARTICLE XXVIII

RESPONSIBILITY OF EMPLOYEE:

29. (A) The Employer agrees that he will not place any man other than a man classified as an "A" electrician, in charge of a job, with the exception of an adequate wiring job.

(B) In the event that the employee responsible for a particular electrical job shall perform his function in a faulty manner, said employee shall be responsible for redoing such job in a proper manner on his own time and without additional compensation.

ARTICLE XXIX

FARMING OUT EMPLOYEES:

30. The Association agrees that there will be no transferring or farming out of employees as between the members to detriment of unemployed unit members of the unit list of availability.

ARTICLE XXX

UNIFORMS:

31. If the Employer requires uniforms to be worn, same shall be supplied and paid for by the Employer. A limit of three (3) uniforms per year per man shall be in effect.

ARTICLE XXXI

WORKING EMPLOYER:

32. No Employer shall work if he employs more than three men.

ARTICLE XXXII

FOREMAN:

33. Any "A" man in charge of four (4) or more men, running a job, shall receive an additional twenty-five (.25) cents per hour above the "A" man's scale for the period of time during which he is in charge of four (4) or more men and running a job.

ARTICLE XXXIII

TRANSPORTATION PAY & COST:

34. The Association member Employers agree to furnish the employee with any transportation costs incurred by the employee outside of the City of New York, and to compute the amount of time worked by the employee from the minute he leaves the City of New York, to the time he arrives at the place of employment; upon submission of daily vouchers.

ARTICLE XXXIV

PAYMENT FOR LOST TOOLS:

35. The Employer shall be responsible for the loss of all tools which have been stolen from under lock and key and reported to the authorities.

ARTICLE XXXV

CONTRACT SURVIVAL:

36. (A) The loss of Membership by an Employer in the Association, in any fashion or manner, whether by act of the Employer, or by the Association, shall in no fashion or manner relieve the Employer of the obligations under this Agreement. All provisions shall remain in full force and effect. In such event, the renewal terms of this Agreement shall be binding upon such Employer in his individual capacity.

(B) All contracts and agreements in force by and between the Union and any individual Employer on the effective date of this Agreement, or on the date such individual Employer becomes a member of the Association, shall be merged herein. All obligations outstanding on the date of merger, shall survive, and the individual employer shall be bound under the terms of said prior contract and Agreement notwithstanding the merger. Said prior contracts and Agreements to survive for the purpose of enforcement by the Union.

(C) This Agreement shall be binding upon the respective parties hereto, their successors and assigns, and shall survive any dissolution, mergers, re-organization, change of name, change of location, place of business, or otherwise. It is the intention of the parties, that no device, such as mergers, dissolution of partnerships, change of corporations, or corporate structure, transfer and/or sales of shares of stock, or change and/or amendment of operating entity, or otherwise, shall be used by any employer so as to avoid the provisions of this Agreement.

(D) Should the principals of any Employer engage in the business of operating additional or other electrical contracting businesses,

directly or indirectly, under any other corporate, partnership or individual entity, then and in that event, such principals shall be personally responsible for the compliance by such other entity with all of the terms of this Agreement, with the same force and effect as though such other entity were a party hereto.

(E) Nothing herein contained, however, shall prohibit any principal from a bona fide entry into another firm which is subject to existing Collective Bargaining Agreement with another Union, providing that such Collective Bargaining Agreement shall have been in existence for over six months at the time of entry of the principal into the new firm, provided further, that such principal is not in default under any of the terms of this Agreement.

ARTICLE XXXVI

LAYOFF NOTIFICATION:

37. Each employer undertakes to notify the Union in writing within 48 hours of any layoff, discharge, or voluntary termination of employment by an employee covered under this Agreement. The Union shall furnish necessary forms to be used by the Employer for this purpose. Failure of an Employer to timely notify the Union, shall render the Employer liable to the Union and to the respective Funds, for all sums of money based on the last weekly payroll period, from dates of layoff, discharge, or voluntary termination of employment, until date of notification.

ARTICLE XXXVII

ANTECEDENT RESPONSIBILITY:

38. (A) Any and all benefits accruing under the terms of the prior Agreement, dated the 15th day of November, 1967, shall

remain in full force and effect, including but not limited to any pro-rated vacation pay.

(B) The interpretation and enforcement of this Agreement shall be governed by the laws of the State of New York.

ARTICLE XXXVIII

SUPPLEMENTAL INFORMATION:

39. There shall be no modification of this Agreement, except by a duly executed modification in writing.

ARTICLE XXXIX

WAGE SCALE:

40. Wage scale, pursuant to Agreement between United Construction Contractors Association, Inc., and Local 819 E International Brotherhood of Teamsters, as of November 15th, 1970.

NOVEMBER 15, 1970 to NOVEMBER 15, 1971

Apprentice

First 6 months	-	2.25 per hour
6 months to one year	-	2.35 per hour
2nd year	-	2.75 per hour
3rd year	-	3.02 per hour
4th year	-	3.34 per hour
5th year	-	3.52 per hour
Mechanics M	-	3.93 per hour
A	-	4.50 per hour

NOVEMBER 15, 1971 to NOVEMBER 15, 1972

Apprentice		
First 6 months	-	2.43 per hour
6 months to one year	-	2.78 per hour
2nd year	-	2.97 per hour
3rd year	-	3.26 per hour
4th year	-	3.61 per hour
5th year	-	3.80 per hour
Mechanics M	-	4.24 per hour
A	-	4.86 per hour

NOVEMBER 15, 1972 to NOVEMBER 14, 1973

Apprentice		
First 6 months	-	2.62 per hour
6 months to one year	-	3.00 per hour
2nd year	-	3.21 per hour
3rd year	-	3.52 per hour
4th year	-	3.90 per hour
5th year	-	4.11 per hour
Mechanics M	-	4.50 per hour
A	-	5.25 per hour

IT IS EXPRESSLY AGREED AND UNDERSTOOD that the Employer shall pay a wage scale pursuant to the rules, regulations and requirements incorporated in public work contracts executed by the employee with any government or municipal authority or subdivision thereof and the public works contract shall supersede this agreement with respect to wages, conditions and hours. When required by contract in the City of New York, the following wage scale shall apply to the classification listed below:

Journeyman A $7.00 per hour

In the event of the Union's affiliation or merger with another Union Local, or another International or in event the Union changes its name or is transferred to the jurisdiction of another region, the successor Union, assignee Union or the newly merged Union, shall assume in all respects the obligations under this Agreement and that the Union, as party to this Agreement shall make known in advance to the successor or assignee Union all the terms and conditions hereof, and the employer agrees to recognize such successor.

ARTICLE XXXX

EXPIRATION:

41. This Agreement shall expire on the 14th day of November, 1973, and shall be automatically renewed from year to year, thereafter, unless written notice of termination shall be given by either party by registered mail, sent not less than 60 nor more than 90 days prior to the said expiration date. Either party, may also, at any time not less than thirty (30) nor more than sixty (60) days prior to the expiration date, or any renewal expiration date, give written notice by registered mail of a desire to modify the provisions respecting hours of work, vacations, wages, pension, welfare and annuity contributions or other minima; such notice shall not act to terminate this Agreement, and should the parties be unable to agree on any such modification, then the same shall constitute a grievance to be determined as hereinbefore set forth.

42. This Contract shall be retroactive to the termination date of any prior contract in existence between the Union and any Association Member.

LOCAL 819E, INTERNATIONAL BROTHERHOOD OF TEAMSTERS
By /s/ Michael Jordon, Bus Rep.

UNITED CONSTRUCTION CONTRACTORS ASSOCIATION, INC.
By: /s/ Theodore Loschn
President

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-ninth Region

In the Matter of:	*	
LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO	*	
and	*	Cases Nos.
WICKHAM CONTRACTING CO. and RALPH PERONE JOINT VENTURES	*	29-CC-410 29-CC-408
EUGENE IOVINE, INC.	*	29-CC-414
BOARD OF EDUCATION OF THE CITY OF NEW YORK	*	

16 Court Street,
Brooklyn, New York,
Thursday, October 24, 1974

Pursuant to notice, the above-entitled matter came on for hearing at 11:00 o'clock a. m.

BEFORE:

HERZEL H. E. PLAINE, Administrative Law Judge.

APPEARANCES:

STEVEN B. FISH, ESQ.,
Counsel for the General Counsel.

N. GEORGE TURCHIN, ESQ.,
253 Broadway, New York, New York, appearing on behalf of Employer.

NORMAN ROTHFELD, ESQ.,
Menagh, Trainor & Rothfeld, Esqs.,
130 East 40th Street, New York, New York, appearing on behalf of Respondent Local 3.

APPEARANCES (Continued):

WILLIAM A. BABISKIN, ESQ.,
Adrian P. Burke, Esq., Corporation Counsel, 1632 Municipal Building, Brooklyn, New York.

1A ROBERT JAY DINERSTEIN, ESQ.,
Gutterman 7 Pollack, Esq.,
71 S. Central Avenue,
Valley Stream, New York,
appearing on behalf of Local 363 Intervenor

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3 JUDGE PLAINE: This is the trial of case before the National Labor Relations Board in the matter of Local 3, International Brotherhood of Electrical Workers, AFL-CIO, the respondent, and the following three charging parties, Wickham Contracting Co. and Ralph Perone Joint Ventures, Eugene Iovine, Inc., and Board of Education of the City of New York in Cases number 29-CC-408, 410, and 414 respectively.

The presiding Judge is Herzel H. E. Plaine of Washington, D.C.

Will the parties enter their appearances?

MR. FISH: Steven B. Fish, counsel for the General Counsel.

JUDGE PLAINE: Respondent.

MR. ROTHFELD: Norman Rothfeld, Menagh, Trainor & Rothfeld.

JUDGE PLAINE: That's of New York City?

MR. ROTHFELD: Yes.

JUDGE PLAINE: For the charging parties; for Wickham Constructing Co.

MR. TURCHIN: I'm appearing for all charging parties both Wickham Contracting, Ralph Perone and Eugene Iovine, Inc.

JUDGE PLAINE: Except the Board of Education?

4 MR. TURCHIN: Yes.

JUDGE PLAINE: Can I get your name, please?

MR. TURCHIN: N. George Turchin, T-u-r-c-h-i-n, 253 Broadway, New York, New York.

MR. BABISKIN: I'm appearing for the Board of Education of the City of New York. My name is William A. Babiskin, B-a-b-i-s-k-i-n, Municipal Building, New York, New York.

JUDGE PLAINE: Are you associated with the Board as a direct employee?

MR. BABISKIN: I'm assistant in the office of the corporation counsel. Adrian P. Burke is corporation counsel.

JUDGE PLAINE: Assistant corporation counsel, let the record show that, Mr. Ballard. Very good.

MR. FISH: -- oh, excuse me.

MR. DINERSTEIN: Robert Jay Dinerstein, D-i-n-e-r-s-t-e-i-n, of counsel to Gutterman & Pollack, P-o-l-l-a-c-k, appearing on behalf of Local 363, 71 South Central Avenue, Valley Stream, New York 11580.

MR. ROTHFELD: If Your Honor please, I don't recognize the status of that entity as a party in this case.

JUDGE PLAINE: We have a conflict of counsel, is that it? Off the record.

5 (Discussion off the record.)

JUDGE PLAINE: Back on the record.

First let's get the identification of Mr. Dinerstein again, and particularizing with whom you are associated, and whom you purport to represent, and then if we have to have any rulings, we will make those rulings.

MR. DINERSTEIN: Robert Jay Dinerstein, of counsel to Gutterman & Pollack, who are counsel to Local 363, International Brotherhood of Teamsters, Warehousemen, Chauffeurs and Helpers of America. We are here to represent the interests of Local 363, who are the employees discriminated against, which is part of the res gestae of this case and we are here to protect their interests if need be.

JUDGE PLAINE: Now, I'll hear you, Mr. Rothfeld.

MR. ROTHFELD: Your Honor, our position is that Local 363 is not and ought not to be treated as a party in this case; that the complaint and the charges do not make them a party in this case. And, therefore, they ought not to participate in this hearing.

And I don't see any basis under the NLRB Rules and Regulations for respondent to send them copies of briefs, period.

JUDGE PLAINE: Well, obviously from the pleadings they are --

6 the Teamsters people appear to be concerned. The Board's rules permit intervention of persons who are interested in intervening in the proceeding.

I refer specifically to Rule 102.29, and if the motion is made during the trial, the motion is addressed to the Trial Judge.

Unless I hear any further objection -- do I hear any further objection from you, Mr. Fish?

MR. FISH: I have no objection.

JUDGE PLAINE: Any other party have any objection to this?

My feeling is that these people have the right to intervene, and I will so recognize them as intervenors in this case.

MR. DINERSTEIN: Your Honor, in accordance with the rules of the Board, I therefore wish to move that we be admitted to participate as intervenors in this action.

JUDGE PLAINE: I will grant the motion.

* * * * *

25 ANTHONY J. BIELE

a witness called by and on behalf of the General Counsel, being, first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Fish) Mr. Biele, can you give us your full name and address for the record, first? A. My name is Anthony J. Biele, B-i-e-l-e, and I live at Pleasant Drive, Brewster, New York.

Q. Mr. Biele, with what firm are you associated with? A. I'm the president of Wickham Contracting Company, Inc.

Q. Did there come a time when your firm became associated in any joint venture? A. Yes. Approximately a year and a half ago

26 we became joint venturers with Ralph Perone to perform work in the City of New York.

Q. And how long has that joint venture been in existence approximately? A. I would say approximately a year and a half, two years.

Q. During the past year, Mr. Biele, did the joint venture in the course and conduct of its business make any purchases directly outside the State of New York? A. Yes.

Q. Did such purchases exceed $50,000? A. Yes, it did.

Q. Now, Mr. Biele, did the joint venture at any time receive any bids for work on Board of Education job sites in the City of New York? A. Yes. We received awards for PS 8, PS 41.

Q. Where are they located? Where are those schools located? A. In the City of New York. PS 8 and PS 41 are located in Staten Island, Tremont Early Childhood Center is located in the Bronx. We also received awards on PS 37, several awards on Samuel Gompers High School. There were several other schools too.

JUDGE PLAINE: These are not just bids, these are awards?

27 A. Awards and notices to proceed, yes. We had contracts on these jobs.

Q. Did work commence on these jobs, Mr. Biele? A. Yes.

JUDGE PLAINE: What sort of work were you doing?

THE WITNESS: We're electrical -- we're doing electrical work for the Board of Education.

Q. Your firm have any contract with any labor organization, Mr. Biele? A. Yes. With Local 363.

MR. ROTHFELD: Objection, and I move to strike. The document speaks for itself.

JUDGE PLAINE: What document?

MR. ROTHFELD: The alleged contract.

JUDGE PLAINE: I don't know that that would establish whether he has a contract with Local 363.

MR. ROTHFELD: If your Honor --

JUDGE PLAINE: What contracts are you talking about, a collective bargaining contract with Local 363?

MR. ROTHFELD: Yes, Your Honor.

JUDGE PLAINE: I see.

MR. ROTHFELD: The witness has just testified that there is in effect some contract between his company and Local 363. I respectfully submit that whether or not whatever document exists con-

28 stitutes a contract, the best evidence of that is the document.

JUDGE PLAINE: That may be. But I'm sure that as president of the company he can at least preliminarily testify that he has a contract. There's nothing wrong with that statement.

MR. ROTHFELD: Nothing wrong --

JUDGE PLAINE: Nothing wrong with that unless you demonstrate that it's untrue.

MR. ROTHFELD: If Your Honor please, I have no objection to the witness stating he has a contract if -- as long as Your Honor doesn't accept that mere statement in and of itself as proof that he does have a contract.

JUDGE PLAINE: Based on your objection, I might think about that, that's right.

MR. ROTHFELD: And I have made that objection.

JUDGE PLAINE: All right.

Q. (By Mr. Fish) Now, Mr. Biele, did there come a time when you were informed about some difficulty on some of the job sites that you were working on? A. Yes.

Q. Tell us about when that was. A. July 19th, a Friday, about 3:30 in the afternoon.

JUDGE PLAINE: What year?

THE WITNESS: 1974.

A. I received a telephone call from a person who identified himself
29 as Jack Burns of the Board of Education. He read a letter to me that he was sending. And in effect what the letter had said that --

MR. ROTHFELD: Objection.

MR. FISH: Your Honor, he's testifying to what was read to him over the phone.

MR. ROTHFELD: If Your Honor please, I submit it's improper hearsay evidence for the witness to testify as to what some other person said to him over the telephone.

JUDGE PLAINE: Is this person in the room? Or will he be available?

MR. FISH: No, he's not in the room, and I don't think it's necessary to call him. He can certainly testify to what this person told him.

JUDGE PLAINE: Well, it is hearsay. The question is, is there any evidence of reliability that would admit it --

THE WITNESS: The letter came -- I got --

JUDGE PLAINE: Well, is there a letter behind it?

MR. FISH: There is a letter which will be introduced subsequently.

JUDGE PLAINE: You're going to connect the conversation with the letter?

MR. FISH: Yes.

30 MR. ROTHFELD: Whether the letter is admissible is something different. If the letter is going to be introduced, and this conversation only related to the letter, then the letter will do the job, if it is admissible.

However, Your Honor, anything else that the witness might say, I respectfully submit is inadmissible, and therefore, I object to this conversation.

JUDGE PLAINE: I don't accept that objection. I am going to permit this conversation, subject to connection. If it turns out that it is not connected, you can renew your objection to strike.

MR. ROTHFELD: If Your Honor please, may the record show that I have a continuing objection to this entire hearsay conversation.

JUDGE PLAINE: Very well.

Q. (By Mr. Fish) Would you please proceed, Mr. Biele.

A. Yes. The letter in effect said that the labor which you are using

on your job is causing work stoppages on other jobs, and that I was to leave the job immediately until further labor which would not cause stoppages on other jobs. And I had asked Mr. Burns how was I doing that. And he said by not employing Local 3 men.

MR. ROTHFELD: Your Honor understands I have a standing objection?

JUDGE PLAINE: Yes.

Q. Continue, Mr. Biele. Did you subsequently receive a
31 letter? A. Basically that was the end of that conversation.

JUDGE PLAINE: Is this man named Burns?

THE WITNESS: Jack Burns.

JUDGE PLAINE: B-u-r-n-s?

THE WITNESS: Yes. And he's employed by the Board of Education.

MR. ROTHFELD: Is it clear on the record that Mr. Burns is not an agent, representative of the respondent?

JUDGE PLAINE: I don't think there's anything on the record other than this indication that he was -- purporting to speak for the Board of Education and sending a letter.

Q. Continue, Mr. Biele. A. I also told Mr. Burns that I couldn't do anything until I received something in writing. And he was going to send me this letter.

JUDGE PLAINE: You said what?

THE WITNESS: That I couldn't do anything, I couldn't pull my men off the job until I received something in writing.

Q. Did you subsequently receive the letter that Mr. Burns discussed with you? A. I received the letter Monday morning. It was exactly what he told me over the telephone.

32 MR. FISH: I'd like this document marked as General Counsel's Exhibit 2 for identification.

(Whereupon the document referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. I show you General Counsel's 2 for identification. Can you tell us what that document is, please? A. This is the letter I received July 22, in the morning of July 22.

Q. Thank you.

MR. FISH: I move that this document be introduced into evidence.

MR. TURCHIN: No objection.

MR. ROTHFELD: I contest its relevance, but if your Honor wishes to admit it, I won't object.

JUDGE PLAINE: I think it's quite relevant. I will allow it in evidence as GC 2.

(General Counsel's Exhibit No. 2 for identification, was received in evidence.)

Q. Now, Mr. Biele, after you received this letter, did you speak to anyone else from the Board of Education? A. The minute I got the letter, 10:30 in the morning, I immediately called Mr. Turecamo at the Board of Education and asked him about the letter. And he said that --

MR. ROTHFELD: Objection to what Mr. Turecamo said to him, heresay, prejudicial.

33

JUDGE PLAINE: Well --

MR. ROTHFELD: And cannot be construed as an admission against the respondent because Mr. Turecamo is not an agent of the respondent, so that the -- that exception to the hearsay rule is not applicable.

JUDGE PLAINE: Will you identify who Mr. Turecamo is, please?

THE WITNESS: He's on the letterheard of the -- what is that, Exhibit 2.

JUDGE PLAINE: Mr. Turecamo appears to be identified on the letterheard received by Mr. Biele, GC 2, as Director of the Bureau of Construction of the Board of Education of the City of New York, Division of School Buildings. It seems to me that a prima facie, if not otherwise, he is a person fully related to this controversay and I will listen to what you heard from Mr. Turecamo.

MR. ROTHFELD: I respectfully except, if Your Honor please, on the ground that if it were President Ford who talked to the witness on the telephone and President Ford were very much related to this controversy, the testimony would still be inadmissible because Mr. Turecamo is not alleged to be an agent of the respondent. Clearly, he is not an agent of the respondent. And hearsay remains hearsay,

34 and there is no exception to the hearsay rule applicable here.

JUDGE PLAINE: I regard this as something that is in the hearsay area that has an element of reliability based on documentation that is presented from the Board of Education. I will hear the witness on it. I'll allow your exception -- noted it. Go ahead.

Q. (By Mr. Fish) Continue with the conversation. A. Mr. Turecamo really didn't say very much. I asked him why I was being thrown off the jobs and he said he just takes orders from Mr. Hugh McLaren, and he transferred me to Mr. Hugh McLaren's office.

Q. Did you have a conversation with Mr. McLaren? A. Yes, I did.

Q. Will you tell us about that conversation? A. Mr. Hugh McLaren told me --

MR. ROTHFELD: Same objection to what Mr. Hugh McLaren told him.

JUDGE PLAINE: I have noted your objection.

Q. Go ahead, continue with the conversation. A. He said -- Mr. McLaren had told me, I want your men off the job immediately. You don't pay the right wages and you have too many apprentices on the job. And --

MR. ROTHFELD: I withdraw my objection to that.

Q. What else did he say --

35 JUDGE PLAINE: Mr. McLaren talked to you?

THE WITNESS: Yes. But I told him I do pay the right wages and if he did have a complaint of that nature, he should report it to the controller's office who investigates this type of matters.

And as a matter of fact we were investigated by the controller's office, and were found.

Q. Please -- is that what you told Mr. McLaren? A. Yes.

Q. I'm sorry. A. We were found to have paid the right wages and had the proper amount of apprentices on the job. I also asked Mr. McLaren how I was causing work stoppages on other jobs. And Mr. McLaren had told me by not employing members of Local 3.

MR. ROTHFELD: As to that I move to strike.

A. He was very excited. And he said I want your men off the job immediately. And I'm just trying to remember exactly what he said.

JUDGE PLAINE: I'll deny the motion.

A. I asked him if there was any other way I could resolve this matter so I could get my men back to work. He said only by joining Local 3, can you work for the City of New York by being a member of Local 3.

MR. ROTHFELD: Objection. Not binding on respondent.

36 Mr. McLaren is not an agent of respondent.

Q. What did you say to that? A. I said this sounds like a form of Hitlerism.

Q. Go ahead. A. There was a heated argument between myself and Mr. McLaren.

Q. How did it end? A. He then told me he was going to issue field directives immediately to have my men thrown off the jobs, which he did follow up with.

Q. Did that subsequently happen? A. Yes, it did. A half hour later I received telephone calls from my foremen saying they got field directives to immediately leave the job site. And I ordered my men -- I told them I have no other choice so I told them to leave the job site.

Q. And how long did they remain off the job site?
A. Approximately three, four weeks. We immediately went to court to obtain a temporary restraining order, and about three weeks --

MR. ROTHFELD: Objection. Coun -- witness is not a lawyer.

JUDGE PLAINE: It's all right. He knows that he has his lawyer do.

MR. TURCHIN: May we go off the record, Your H or?

37 JUDGE PLAINE: Yes.

(Discussion off the record.)

JUDGE PLAINE: On the record.

You were at the point where you went to court for an injunction.
A. And we got a temporary restraining order, and approximately three weeks later we received a letter signed by Mr. Hugh McLaren telling me to disregard the first letter.

Q. And your men thereafter went back to work? A. About a week later, I reorganized my men and we went back to work at the school sites. We reorganized the job again.

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

MR. FISH: Your Honor, the letter that you requested, we have made a search for it. We don't seem to have it at the moment, but we will have it at the end of the hearing, and we will have that document into the record.

I'd like this document marked as General Counsel's Exhibit 3 for identification.

(Whereupon the document referred to was marked General Counsel's Exhibit No. 3 for identification.)

38 Q. (By Mr. Fish) I show you General Counsel 3 for identification, Mr. Biele. Can you tell us what this document is? A. This is a temporary restraining order.

Q. This is a copy of the temporary restraining order?

A. Yes.

MR. ROTHFELD: You have a copy for me, sir?

MR. FISH: I will have.

JUDGE PLAINE: Identify it by date and the name of the judge.

MR. FISH: Yes.

JUDGE PLAINE: The name of the case.

MR. FISH: It's dated July 30, 1974, signed by District Court Judge Charles Stewart. The name of the case is Wickham Contracting and Ralph Perone, against a whole series of defendants including the Board of Education and others.

I move that this document be introduced in evidence.

JUDGE PLAINE: Any objection to the admission of GC 3?

MR. ROTHFELD: One moment, please.

If Your Honor please, this -- I object to this temporary restraining order. It makes reference therein to some tentative findings of fact by the Judge who signed the order relating to respondent,

although respondent was not served with these papers, had no chance
39 to appear and controvert them. So that even though the Judge did line out any reference to injunctive relief against respondent, he does make reference to the respondent in here without respondent having had an opportunity to appear before him. So that I deem this -- the receipt of this exhibit in evidence not only as irrelevant, but as prejudicial to the respondent if received.

JUDGE PLAINE: You have anything to say on that?

MR. FISH: I would just -- just that it's not being introduced for the purpose of binding respondent in any way or manner, and no purpose of any other finding.

JUDGE PLAINE: I think it's very relevant to what's been going on, as the background or part of this case, if you will, it may even be more than that. Nevertheless, the fact that you weren't there doesn't mean you couldn't have been there. And I'm not going to pass on that. I'm simply accepting it for what it's -- it purports to be.

It purports to be a temporary restraining order against the persons named as defendants in the case, and --

MR. ROTHFELD: That's not true, Your Honor. Local Union No. 3 is named as a defendant, but it is not a temporary restraining
40 order against Local Union No. 3. In fact, the Judge lined out that defendant among others.

JUDGE PLAINE: That's very clear from the document itself. It will speak for itself. I will not read into it anything that isn't there. And I will admit it as GC3.

(General Counsel's Exhibit No. 3 for identification, was received in evidence.)

MR. BABISKIN: Your Honor, I certainly have no objection to this coming into evidence. I will direct Your Honor's attention to the

third page in which the Judge wrote into the temporary restraining order written language which is not terribly legible here in the copy you have, but which says other than the three contracts referred to in Exhibits 1, 2, 3 inclusive annexed to the complaint and affidavits.

In other words, this temporary restraining order the Judge had signed did not cover the three projects to which Mr. Biele has talked about with regard to conversations he may have had with Mr. McLaren. So this goes directly to my comments made during my opening remarks, to the statements made by Mr. Turchin, in that Mr. McLaren's letter to rescind -- with regard to those three projects, had nothing to do with the temporary restraining order.

41 MR. ROTHFELD: If Your Honor please, based upon the current statements by counsel with respect to the handwritten language in this temporary restraining order, which I wasn't able to read, I now renew my objection on the grounds of relevancy. Assuming what counsel for the Board of Education has said is correct, with respect to the illegible written language on the exhibit, I ask the rule on the exhibit be changed, and it be put in the rejected exhibit file.

JUDGE PLAINE: No. I will ask counsel for the General Counsel what is not legible be made legible. And you can use the copy that the Board of Education has to get your copies from.

MR. BABISKIN: I fear the Xeroxing of my copy will result --

JUDGE PLAINE: It can help us provide a legibile --

MR. BABISKIN: I am prepared to re-read exactly what it says.

MR. FISH: I believe he just read it in the record, Your Honor. I believe we can stipulate what he read into the record was an accurate reproduction --

MR. BABISKIN: All that it is is a Xerox of what I have right here.

MR. ROTHFELD: Mr. Fish, will you now also stipulate that
42 what attorney Babiskin said is true, namely that what -- as is indicated by this handwritten material, it does not relate to contracts concerning which the witness has testified he had conversation with Mr. McLaren.

MR. FISH: The document speaks for itself.

MR. ROTHFELD: Unfortunately it does not, Mr. Fish.

JUDGE PLAINE: This is argument by counsel. I will not accept -- I will not accept these descriptive materials from counsel. If he wants to take the witness stand and testify, that's another matter. But I am not going to accept what counsel says the document means.

I accept the document as a document with the clarification of the alleged illegible words.

MR. FISH: Fine.

Q. (By Mr. Fish) Now, Mr. Biele, did you have any conversations with any officials from Local 3? A. Yes, I have.

Q. Would you tell us who you had a conversation with and when it took place? A. I had a conversation with Mr. Bernard Rosenberg, who is sitting right here. He called me up, I believe, on July 2nd, and made an appointment --

MR. FISH: Your Honor, can we have a stipulation that Mr. Rosenberg is a business agent of Local 3?

MR. ROTHFELD: Mr. Bernard Rosenberg seated to my left, is a business representative of Local Union No. 3.

43 JUDGE PLAINE: Thank you.

Q. Continue, Mr. Biele. A. At any event, we met at the Villa Manero Restaurant, July 25 at 6:30 p.m., and basically the

conversation we had was Mr. Rosenberg told me how good Local 3 was. He said he had a good apprenticeship program, that his A mechanics have a lot of benefits, that they go to Bayberry Farms when they graduate and so on and so forth.

And he basically told me how great Local 3 was.

Q. What else did he say? A. Then he said that if I joined Local 3, he would give me good men to complete my jobs at PS 8 and PS 41 and Tremont Early Childhood Center and any other school jobs that I may have.

And I said I couldn't very well make decisions for my own men, I already had men scheduled for those jobs.

Q. Continue. A. I can't remember everything that went on because a lot of conversation didn't really mean that much. It was about the weather, how things were. And he was very cordial in his approach and everything he said.

Q. How did the conversation end? A. I basically went down there to speak to him to find out what's happening to me, to the schools, but I really got nothing out of that. It ended with nothing resolved

44 really. Just nothing.

Q. When he asked you to join Local 3, he gave you the reasons why he felt you should, what was your response? A. I can't vote for my men. I can't have my men vote for Local 3. And that was it -- that was about it. He just said if you join Local 3, we'll give you good men to finish up your work on the school jobs, that he has good Local 3 men to put on them.

MR. FISH: I have no further questions of this witness.

JUDGE PLAINE: Do any of the charging parties or intervenors have any questions?

MR. TURCHIN: Just one to clarify the record.

Q. (By Mr. Turchin) With reference to General Counsel's Exhibit 3, were the jobs mentioned in this restraining order the jobs that you have discussed with Mr. McLaren in your conversation with him that you just related? A. Those jobs and other jobs too besides those jobs. We also received letters to leave PS 115, two jobs at Samuel Gompers, PS 37. We received letters to remove our forces from those jobs as well.

Q. But the jobs -- the jobs set forth in the restraining order were jobs you were performing for Local 3 on which Mr. McLaren asked you to leave in the conversation you had with him? A. Yes.

45 All of them, yes.

MR. FISH: Your Honor, I think I've just gotten the documents that you referred to.

JUDGE PLAINE: Well, we'll get them in so if there's any further questions on these, we'll get them in.

MR. FISH: Yes. You said you wanted the directives in as well.

JUDGE PLAINE: Yes. I'd like the whole business. It has a direct bearing in this case.

MR. FISH: I'd like this document to be marked as General Counsel's 4 for identification, please.

(Whereupon the document referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Fish) I show you General Counsel's 4 for identification. Can you tell us what that is? A. This is the directive that was given to our foremen at the job site, one of the job sites. It's typical of several other directives I've had.

JUDGE PLAINE: Does it happen to have a date?

MR. FISH: Yes. It's dated July 22, 1974.

JUDGE PLAINE: That's from the Board of Education.

THE WITNESS: 11:00 o'clock a. m.

MR. FISH: Yes. From the Board of Education.

I move this document be introduced into evidence.

JUDGE PLAINE: Has counsel seen that?

46 MR. FISH: Yes.

MR. ROTHFELD: No objection.

JUDGE PLAINE: All right. In evidence as GC 4.

(General Counsel's Exhibit No. 4 for identification, was received in evidence.)

MR. FISH: As General Counsel Exhibit 5A and 5B I'd like these two documents marked for identification.

(Whereupon the documents referred to were marked General Counsel's Exhibits 5A and 5B for identification.)

Q. (By Mr. Fish) I show you General Counsel's 5A and 5B for identification. Look at those documents. Tell us what they are, please. A. This is the letter I received telling me to disregard the first order.

Q. This is General Counsel's 5A, a letter dated August 6, 1974. It's actually a letter with a copy of a prior letter attached to it, two pages from the Board of Education to Wickham.

5B? What is 5B? A. It's the same context as that except covering different school sites.

Q. Different school sites, thank you.

JUDGE PLAINE: Same date?

MR. FISH: Yes. Same date, August 6.

47 JUDGE PLAINE: The purport was to rescind a previous stop order, is that it?

MR. FISH: Yes. Copies of the stop order are attached to the letters so each are two page documents.

JUDGE PLAINE: All right.

MR. FISH: I move they be introduced.

JUDGE PLAINE: There being no objection, it's in evidence as GC 5A and GC 5B respectively.

(General Counsel's Exhibits 5A and 5B for identification, were received in evidence.)

MR. FISH: Nothing further, please.

JUDGE PLAINE: Back to the charging parties or intervenors, if they have any further questions?

MR. TURCHIN: No questions.

JUDGE PLAINE: No further questions?

MR. TURCHIN: No.

JUDGE PLAINE: You may cross examine.

CROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. Biele, I believe you told us before that Mr. Rosenberg had talked about PS 8 and PS 41? A. Yes.

Q. Would you think carefully and try to remember whether you are sure Mr. Rosenberg made reference to those schools?

48 A. Absolutely positive.

Q. Mr. Rosenberg named these schools? A. Yes, he did.

Q. All right. Now, Mr. Biele, you told us you had a contract with the Teamsters. Where is it? A. I don't have it with me.

Q. Do you know where it is? A. I have a copy at my office. It's with the United Construction Contractors, who bargain for us.

Q. Where is your office? A. It's in Pelham, New York.

Q. Could you have it here tomorrow? A. I guess so, yes.

Q. When did you sign that contract? A. It's -- wait a minute now. Let me just think.

I belong to an association who bargains on our behalf, who in turn signed the collective bargaining agreement on our behalf for -- with Local 363 on our behalf. I believe that's how it is.

Q. Did you ever sign such a contract with the Teamsters?
A. I didn't sign directly. I signed with the association who is authorized to bargain for us. I believe that's the --

Q. When is the last time you signed something which somehow gives you collective bargaining relationship with the Teamsters.

49 MR. TURCHIN: May I object, Your Honor. It's not relevant or material and I think we're going far afield from the issues. The issues are not whether or not there was a valid collective bargaining agreement. This is not an 8(a) charge. We're dealing with an 8(b)(4) charge. I object to any further areas of inquiry that are not relevant or material.

MR. ROTHFELD: May I be heard?

If Your Honor please, the witness so testified on direct at the instance of the General Counsel. I controverted the assistance of this document at that time. Your Honor nevertheless received in evidence, and did not strike the testimony. The General Counsel believed it relevant. I do also.

JUDGE PLAINE: Well, it is to a degree relevant, but even if the man was non union, you can still have the sameproblem in this case. Assuming he had no union employees, you still have the same 8(b)(4) problem to face.

MR. ROTHFELD: If Your Honor please, we have denied paragraph 28 of the complaint.

JUDGE PLAINE: 28 of the complaint, let's see what that says.

MR. ROTHFELD: And 27.

JUDGE PLAINE: Yes, I see you have. Now --

50 MR. ROTHFELD: Now, if the General Counsel wishes to withdraw paragraphs 27 and 28, we might be in a different situation. But the General Counsel -- as long as the General Counsel continues to allege those two controverted paragraphs, and in view of the direct testimony, I think I should be permitted to cross examine.

JUDGE PLAINE: Yes, I suppose you should. But we're now in the area of producing the contract, is that right? Is that what you're asking for, the production of the contract?

MR. ROTHFELD: Among other things, yes.

JUDGE PLAINE: Is there some problem about producing it, Counsel?

MR. FISH: I don't believe so. I believe Mr. Biele said he has it and --

JUDGE PLAINE: Are you able to obtain a copy of the contract?

THE WITNESS: My agreement with my United Construction Association, yes.

JUDGE PLAINE: I understand that you didn't directly sign it. From your testimony --

THE WITNESS: I have a copy of the collective bargaining agreement if that's what you want.

51 JUDGE PLAINE: Apparently that's what counsel is getting at.

THE WITNESS: The employees of Wickham Contracting didn't do any work on the school at all. They were employees of Ralph Perone, so I don't know what relevance they would have in this case.

JUDGE PLAINE: That isn't the issue, but what is the hedging about production of the contract? Is there some problem that I don't see?

MR. TRUCHIN: Again, I know what counsel is leading to, so I'll clarify the record if Your Honor wants to understand what's happening.

The contract with the United Construction Contractors Association, whom I also represent, was a three year contract that terminated in November, 1973. A petition for representation was filed by Local 3. An election was held on the 19th day of September, 1974. The election resulted in a vote for Local 363 of 173; a vote for Local 3 of 103. And there were sufficient challenged ballots to bring into question the question of who would have a majority. That question is now before Region 2 on the objections and other matters.

The contract is being questioned, I would assume, in that an election has taken place I would believe that was the purpose of the area of inquiry that Mr. Rothfeld was going into. And if that's the

52 purpose, again we can produce the contract very easily and I'm sure in fact the contract is available, but again it's not material or relevant.

JUDGE PLAINE: Well, there's no reason why we shouldn't have the contract. The fact that there's a contest doesn't unseat the union. There's a continuing presumption until they are unseated. And indeed some of these events that I'm concerned with appeared to have happened before the date of the alleged election that you're talking about.

MR. TURCHIN: That's correct.

JUDGE PLAINE: So that it seems to me the fact that somebody is challenging the right of this union to continue as bargaining representative is immaterial. But the contract may very well be, so let's have the contract, let's put it in evidence, and if counsel has some questions about it, and they're relevant, we'll hear it.

MR. TURCHIN: I can produce the contract this afternoon.

JUDGE PLAINE: Do you want to postpone any questions?

MR. ROTHFELD: No, I do not, Your Honor.

Q. (By Mr. Rothfeld) Mr. Biele, when did you last sign any document which gives you, as you state, a collective bargaining relationship with the Teamsters.

MR. TURCHIN: Objection.

53 MR. DINERSTEIN: I join in that objection.

JUDGE PLAINE: What's the purpose of the question?

MR. ROTHFELD: If Your Honor please, it is in issue. There are paragraphs 27, 28. I think I should be permitted to examine, to make all reasonable questions. I don't know what dates documents are going to come up with. I have the witness on the stand now.

JUDGE PLAINE: This is why I suggest we postpone your examination on this one issue. Let's have the papers if there are documents that involve this man's signing, we'll have them in here too, I suppose.

MR. DINERSTEIN: Your Honor, if I may speak to this objection. It's not as yet been established at all, or in any way that any of the employees involved in this were employees of the witness. Therefore, the relevance of the contract becomes an issue in and of itself. Until such time as it has -- there's an establishment of the fact that this man's employees were on the job, I don't think the issue of the contract should be gone into.

JUDGE PLAINE: How is he involved? Isn't the part of this joint venture?

MR. DINERSTEIN: I believe, Your Honor, this is for cross examination to bring out. I believe that had this been investigated,

54 it would have been shown that while the witness has a direct interest and bearing on this case, the employees in fact, may or may not have been his. And this is something that must be determined before any contract that this witness may have had between himself and Local 363 is relevant.

JUDGE PLAINE: Well, are we, or are we not, going to see the contract?

MR. TURCHIN: Yes, sir. Also the contract. And we'll produce the contract this afternoon. If Your Honor --

JUDGE PLAINE: Is there some document indicating that this man is part of the association?

MR. TURCHIN: There was a decision of Region 2 which decision included as part of the association the employer Wickham Contracting Company, Inc., and the election that took place, took place with the employees of Wickham Contracting Company, Inc., all of which is well known to counsel for Local 3.

JUDGE PLAINE: I don't know.

MR. TURCHIN: I will indicate, Your Honor, that I am prepared to produce all of this documentation so that the names -- there was a Board decision which specifically sets forth the names of the association members, one of them was Wickham Contracting Co., Inc.

55 JUDGE PLAINE: Let's have the documents this afternoon. I will postpone this portion of the cross examination until the documents are here.

MR. ROTHFELD: I must respectfully object, Your Honor. I claim I don't have my due process.

JUDGE PLAINE: You're going to get all the due process you want until dooms day. Cut out the talk like that. You are trying to ask him about documents that are not here, and they're going to be here this afternoon.

MR. ROTHFELD: If Your Honor please, the credibility of the witness is at issue as far as respondent is concerned. The respondent is --

JUDGE PLAINE: I am not concerned with that issue. I'm concerned with your questions about these documents which are not here. I will not permit further examination on the subject until the documents

are here, or if they're not here -- if they're not produced, then I'll listen to you.

MR. ROTHFELD: I respectfully descend from your Honor's ruling. I take the position that my being foreclosed from asking the witness now while he's on the stand with respect to his alleged relationship with the Teamsters such as it is, severely prejudices respondent's right in this case, but I must adhere to your ruling.

MR. TURCHIN: May I suggest, it's a quarter to 1:00. Can
56 we have an adjournment for lunch until 2:15 at which time I can produce the documents and the witness can testify.

JUDGE PLAINE: Maybe there's some further examination on other subjects.

MR. ROTHFELD: There is, Your Honor.

JUDGE PLAINE: Why don't we continue.

MR. ROTHFELD: But I must make clear that it not be cured by my being permitted to examine the document after the document comes in, and after conference with counsel and the witness with respect to these documents.

JUDGE PLAINE: Please, Counsel, I have ruled, and I want to make it very clear to you I'm not going to be discussing questions of documents that are not here, and that can be produced and made available to you and the witness.

MR. ROTHFELD: All right.

Q. (By Mr. Rothfeld) Mr. Biele, is it true, sir, that Mr. Hugh McLaren told you that you don't comply in respect with the prevailing rate of wage law under Section 220 of the Labor Law of the State of New York, and that your apprentice journeyman ratio is improper on jobs? A. That's not the exact words he used, but the context is about --

Q. That is the import of what he said? A. He said -- he
57 was very angry and upset, and he said you don't use the right -- you don't pay the right --

JUDGE PLAINE: You don't use the right what --

THE WITNESS: You don't use the right ratio of apprentices, and you don't pay the right wages and he said it very angrily, very upset. And he said get off the job.

JUDGE PLAINE: This was McLaren now?

THE WITNESS: Yes.

Q. Now -- A. And I answered him.

Q. Now, Mr. Biele, you were away from the job about a month, weren't you? A. Approximately, yes.

Q. During that month, the Local 3 electricians remained off the job, didn't they? A. Yes. I think so. I don't have first-hand information about that, but I think so.

* * * * *

63 REDIRECT EXAMINATION

Q. (By Mr. Turchin) Now, the injunction was -- and the temporary restraining order was signed on July 30, 1974, and the letter that you received advising you that you could return to work was dated August 6, 1974, is that correct? A. That's correct.

Q. And is it a fact that you did not start work on your Board of Education jobs for a period of three weeks for reasons outside of the fact that you could have returned, but that you were in a controversy with the Board concerning the time that was stopped, and the monies that were due?

MR. ROTHFELD: Objection, Your Honor. How leading can you get.

MR. TURCHIN: That's exactly his point. I want it to be clear. He raised the issue of the month. I'm now on --

JUDGE PLAINE: You're talking about an interval after he might have been able to start under the Board's directive, is that it?

MR. TURCHIN: Exactly.

64 MR. ROTHFELD: Judge, I think that's about as leading a question as I ever heard.

JUDGE PLAINE: I'm sure he's led the witness, I understand.

MR. ROTHFELD: I object.

MR. TURCHIN: Well, it's in response, sir, to the question that was asked by Mr. Rothfeld on cross. Mr. Rothfeld opened that issue. I'm entitled to lead the witness to that point to get a response.

JUDGE PLAINE: Well, if it -- what's your answer?

THE WITNESS: By being thrown off the jobs, I had a lot of problems because we had planned to meet all of our work during the summer months when it was recess. By going back a month later, my job would be then dragged out over a period of an entire year to complete it because we have to coordinate it with the children in the school, and I was worried about my financial status by returning to the schools and --

JUDGE PLAINE: So you didn't start right away?

THE WITNESS: I started a week later, and -- no, I didn't start right away. Like on the new construction jobs some pipes were buried with concrete, they were filled with concrete, and problems like this. Job problems arose that resulted from being thrown off the jobs.

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AFTERNOON SESSION

2:00 p.m.

JUDGE PLAINE: On the record.

We're back to some direct examination of Mr. Biele based on General Counsel's ability to have found certain documents that were apparently missing this morning.

MR. FISH: I'd like this document marked as General Counsel Exhibit 6A for identification.

(Whereupon the document referred to was marked General Counsel's Exhibit No. 6A for identification.)

MR. FISH: Mark this 6B, this other document.

(Whereupon the document referred to was marked General Counsel's Exhibit No. 6B for identification.)

Q. (By Mr. Fish) I show you General Counsel Exhibit 6A for identification and ask you to identify that document for us, please.

A. This is the collective bargaining agreement between the United Construction Contractors Association, of which I am a member, and Local 363.

Q. I notice there is some writing that appears on the front page of this contract, Mr. Biele. I'm not really sure who put that writing in. Was that part of that contract or -- A. No, it's not. Nor am I aware of this type of writing.

67

MR. FISH: I would move that this contract be introduced into evidence with the understanding that the handwritten notes on the cover are not includable or shall not be includable rather than to physically strike this document.

JUDGE PLAINE: Is there some objection, counsel?

MR. ROTHFELD: Yes. I'm objecting first on the grounds that this is not a document which was signed by the witness or any

officer of the witness company. And, therefore, is not probative of the allegation in paragraph 27 of the complaint. And while the record does now state that this language on the bottom of the front cover, it shall be deemed not counted -- it's there. I don't know who put it there. I would say it's prejudicial.

MR. FISH: Along with this document, I would like to introduce General Counsel's Exhibit 6B, which is a supplemental decision and direction of election issued in Case No. 2-RC-16244, which is a Board decision 212 NLRB No. 127 decided in Region 2, and I direct Your Honor's attention to footnote 4 in which names of the employers who comprised the membership in the association are included therein, with the name of Wickham Contracting mentioned in that footnote. I move that these documents be introduced together.

68 MR. ROTHFELD: Your Honor, I've already objected with respect to 6A. With respect to 6B I have no objection, and I respectfully direct Your Honor's attention to the bottom paragraph in this same Exhibit 4 which reads petitioner's contention that upon a victory in the election in this unit, it ought to be certified as representative of the association members individually as well as for the group has no merit, unquote.

I believe that's very significant in this situation.

JUDGE PLAINE: Of course, that may be argumentative as to the weight to be given to this. But in terms of evidence, it represents the witness' backup for his statement that he is part of a group that signed a group or association contract, and General Counsel is attempting to put the two together to meet the request that you've made.

Now, you may not be satisfied. You may regard there's something weak about it. I simply cannot exclude it in evidence. I will admit it as GC 6A and B respectfully. You can argue the weight of it in your brief or elsewhere.

MR. FISH: I have no further questions.

(General Counsel's Exhibits 6A and 6B for identification were received in evidence.)

RECROSS EXAMINATION

69 Q. (By Mr. Rothfeld) Mr. Biele, you've just stated that Wickham Electric joined the United Construction Contractors Association. When did it do so? A. I would say roughly eight years ago, roughly.

Q. Roughly? A. Yes.

Q. Do you have any document evidencing that date or the fact that you joined it? A. I go through my files, we pay dues to them, we have that type of evidence.

Q. Okay, sir. Now, Mr. Biele, you've testified that the people on these Board of Education jobs were employees of Perone, your co-venturer and not of Wickham, is that your testimony?
A. That's correct.

Q. Now, let's take Sal Vecchio, V-e-c-c-h-i-o. During the past year, has he ever been on the payroll of Wickham?
A. Yes.

Q. Let's take Ira Maisler, M-a-i-s-l-e-r, same question.
A. I don't know. We had about 40 employees or more, and I can't remember who was on that payroll.

Q. Sir, when you say we had 40 employees, does we --
A. I said the corporation, Wickham Contracting.

70 Q. We referring to -- A. Wickham Contracting alone.

Q. Alone? A. Yes.

Q. I see. How many employees do you have now in the name of Wickham? A. I think there's less than 20. I can't give you an accurate answer unless I go through my books.

Q. There are less than 20 and you recently had more than 40? A. Perhaps about six months ago or so. These are records that I have to produce.

Q. And the other employees are not picketing Wickham wearing Local 3 signs, are they not? A. Pardon?

Q. The balance of these employees are now on strike and wearing picket signs with Local Union No. 3's name on them, are they not? A. I don't think so. I'm not aware of that.

* * * * *

75 Q. (By Mr. Rothfeld) Mr. Biele, in your conversation with Mr. Rosenberg, did Mr. Rosenberg claim to represent employees of either Wickham or Perone? A. Absolutely not. Absolutely not, no. The striking came only after the election, directly after the election certain men quit and Local 3 issued them temporary MJ cards, and the next thing I knew, several of the men who were working for Perone were picketing outside, pictures were taken, and they were replaced by permanent Local 3 men.

Q. Mr. Biele, your testimony is Mr. Rosenberg didn't tell you he had pledge cards in his pocket? A. He had pledge cards, he never showed them to me. I never saw pledge cards.

Q. My question is, sir, did he tell you he had pledge cards? A. Not to my recollection.

76 Q. You sure about that? A. I don't recall anything about pledge cards.

Q. Sir, is it your testimony that you don't remember, or that you know that Mr. Rosenberg said nothing to you about having pledge cards? A. We were in the restaurant for four hours and anything could have been said in four hours. I don't recall Mr. Rosenberg mentioning pledge cards. I don't know.

Q. During those four hours, could Mr. Rosenberg have said that he had pledge cards?

MR. FISH: Objection.

A. He could have --

MR. FISH: Objection.

JUDGE PLAINE: It's speculative.

Q. Mr. Biele, are you certain that during those four hours Mr. Rosenberg never said he had pledge cards? A. I don't recall it. I just don't recall him saying he had pledge cards, it's as simple as that. I don't recall him saying he had pledge cards.

Q. Now, getting back to this strike, can you name any one of those gentlemen whom I have named who you believe is not on strike? A. I just didn't know they were on strike. They quit. To join Local 3. They quit.

77 Q. They quit? A. Yes.

Q. They -- did they give you letters of resignation?

A. No.

MR. FISH: I'd like to know why we're going into this. I'm going to object to this whole line.

JUDGE PLAINE: This is what I was getting at. You're now bringing us down to what's going on now in terms of a possible labor dispute. It has nothing as far as I can see to do with the allegations of this case or the time in which -- the time frame in which the events alleged in the complaint occurred. I think it's beyond the scope of our case.

* * * * *

79 Q. (By Mr. Rothfeld) Did any of -- did any employees at all during the past month submit a letter of resignation to you?

80 MR. FISH: Your Honor, I'm going to object.

JUDGE PLAINE: What was that?

MR. FISH: I said I'm going to object again and I would like a ruling on this testimony.

JUDGE PLAINE: What's your reason?

MR. FISH: Again, it's well beyond the scope of the complaint, what the employees are now, whether they have resigned now or haven't resigned now.

JUDGE PLAINE: In your view, what are the time limits of the complaint?

MR. FISH: Time limits of the complaint?

JUDGE PLAINE: Yes. Are we talking a precise period in the past, or are we talking about the past and present as counsel seems to think we are?

* * * * *

81 JUDGE PLAINE: Well, you're reading something into that. I understand you to say that the complaint complains of your current conduct as well as what you did in the past.

MR. ROTHFELD: That's one of my contentions. Another of my contentions is that the complaint states that respondent has been engaged in a certain labor dispute because the employers refused to hire people supplied by Local Union No. 3. And that is the witness' direct testimony.

The evidence as has recently been adduced shows that respondent was not looking to replace these individuals. These individuals were affiliated with respondent, and had allegiance to respondent. Respondent was not looking to knock them out of jobs. They were respondent's people.

* * * * *

85 MR. ROTHFELD: Judge, all I can do then is make an offer of proof that if permitted to continue to elicit on cross examination the testimony of the witness with respect to the relationship of Wickham Electric to its employees and its union and the union which allegedly represented those employees, and the relationship of Perone Electric with its employees, and the union which allegedly represented its employees, that that evidence would tend to show that paragraphs 27 and 28 of the complaint were at all times incorrect, at all times, and not just after September 20, 1974.

And furthermore, that paragraph 28 allegation with respect to the reason for its labor dispute could not have been correct, and that no finder of fact could reasonably find that the reasons set forth in paragraph 28 were correct.

Based on your ruling, I desist from further cross examination because this is what I have.

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87 EUGENE IOVINE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Fish) Full name and address for the record.
A. Eugene Iovine, Seaford, New York.

Q. What firm are you associated? A. I'm the president of Eugene Iovine, Inc.

Q. What type of work does your firm do? A. Electrical contracting.

Q. Are you a party to any contract with a labor organization?
88 A. Yes. I belong to the United Construction Contractors

Association, which is our collective bargaining agent for our employees with Local 363, IBT.

Q. Does your firm make any purchases outside the state? A. Yes.

Q. Do you do over $50,000 annually of such purchases? A. Yes.

Q. Your firm ever receive any contracts for Board of Education work? A. Yes.

Q. For what schools? A. I have primary school 175 at City Island in the Bronx, and East New York Vocational High School in Brooklyn.

Q. Did there come a time when you had some problems with your work on that school? A. Yes.

Q. Those schools rather. Would you tell us about it, please? A. On July 23rd I received a phone call from Mr. Turecamo from the Board of Education. He informed me that my men would have to leave the job sites. And I said that's ridiculous. I said why. He said because --

89 MR. ROTHFELD: Objection to what -- to this hearsay telephone conversations.

JUDGE PLAINE: I'm going to apply the same ruling I applied earlier. I think there is basic reason to regard this -- it may be in the form of hearsay -- as reliable hearsay. There is backup for it. And I will allow it.

MR. ROTHFELD: Your Honor, I respectfully submit that the concept of reliable hearsay is not part of our jurisprudence. It is not one of the exceptions to the hearsay rule, that's either in the prior Federal rules of evidence or in the rules which are now in the process of being adopted by the Congress. I've never heard of reliable hearsay before.

JUDGE PLAINE: Well, I think you should refer to Wigmore as one source. There are other sources. But in any event, this testimony has within it inherent credibility based on written evidence supplementing it, and I will allow it.

Q. (By Mr. Fish) Continue, please.

MR. ROTHFELD: If Your Honor, please, may I make one brief notation?

JUDGE PLAINE: Yes.

MR. ROTHFELD: To the extent that this evidence is -- that these hearsay conversations are supportive of the written documentary evidence, they are unnecessary.

90 The documentary evidence speaks for itself. To the extent that they contradict the written documentary evidence, I submit they should not be admitted. And, therefore, I see no purpose in admitting them, but I have no alternative here.

Q. Continue, Mr. Iovine, please? A. On July 23rd I received a phone call from Mr. Turecamo from the Board of Education stating that I would have to vacate the two jobs that I have because Local 3 informed the Board of Education that unless Iovine, any other Teamster affiliate or any non affiliate of Local 3 were removed from the Board of Education sites, they would pull a job stoppage on approximately 100 to 110 of their schools.

MR. ROTHFELD: I now renew --

A. At that time --

MR. ROTHFELD: Oh, I'm sorry.

JUDGE PLAINE: Finish your answer.

Q. Finish your answer, Mr. Iovine. A. At that time I replied that I thought it was ridiculous, that because somebody else in the City of New York calls up the Board of Ed., and tells them

they don't like someone, that they have the right to automatically throw them off the job.

91 He said, "Regardless of what you think," he said, "You are not to show up on the job sites."

I says that's ridiculous, that's prejudicial. I have every intention of completing the jobs that I have signed a contract with the Board of Education for.

I said they are bonded jobs, our men are qualified workers, and we have no intention of leaving the job sites.

He says, 'If you don't voluntarily leave them," he says, 'We will instruct our field representatives not to allow you on the job," he said, "and a letter is coming out from Hugh McLaren telling you that you are in violation of the contract because you do not have men of the same labor type that Local 3 wants on the jobs."

I said, "Well, you can tell your field superintendents whatever you want, but my men will continue on these jobs."

He says, 'Well, we're just going to have to lock the gates and keep you off." I said, "Does this apply to any other trade." He says, "No, on the electrical."

I says, "Well, then I'll have to take that up with my attorneys, but as it stands right now, we have no intention of vacating our jobs."

At that -- at that time he said, "You will get a registered letter in the mail tomorrow morning telling you to leave the jobs." And

92 I says, "Send your letter, I'd appreciate it, and I will then turn it over to my attorneys.

MR. ROTHFELD: I now --

JUDGE PLAINE: Before you do, did you get such a letter?

THE WITNESS: Yes, I did, Your Honor.

JUDGE PLAINE: All right.

MR. ROTHFELD: I now respectfully move to strike on the grounds that Your Honor's belief that this evidence which was to be forthcoming was reliable evidence, is shown to be completely mistaken. The witness testified about a telephone conversation with Mr. Turecamo where Mr. Turecamo said that a representative of Local 3 said certain things to certain unnamed persons other than Mr. Turecamo.

The telephone conversation does not state that Mr. Turecamo, the man who spoke to this witness, spoke to any representative of Local 3 or was even present when this representative of Local 3 allegedly said these things. So we not only have hearsay, but this is at least hearsay once removed and maybe hearsay twice removed or three times removed or four times removed, depending on how many people were between the representative of Local 3 who allegedly said these things, and Mr. Turecamo hearing it from some unidentified

93 person. And if this kind of telephone conversation is reliable, then anything is reliable.

JUDGE PLAINE: The only comment I have on this is that it's clear that this is what the witness claims he heard Turecamo tell him, followed by a letter telling him to get off the job.

Now, whether or not this ultimately proves that your client did all of the things that Turecamo is alleged to have said, is another matter.

MR. ROTHFELD: Well, Judge, if it doesn't prove it, then it's irrelevant.

JUDGE PLAINE: It's not irrelevant. The part of the case is that the Board of Education did stop this work for these alleged reasons. So it's not --

MR. ROTHFELD: Judge, I submit, this is highly prejudicial and there's nothing I can do about it.

JUDGE PLAINE: Let's not debate it. You can argue it in your brief.

MR. ROTHFELD: Except make a record.

Q. (By Mr. Fish) Did you in fact, stop work, Mr. Iovine? A. No, I did not stop work. Because I had 14 families to worry about --

Q. You don't have -- A. No, I did not.

94 Q. You continued to work in spite of these instructions? A. Yes.

MR. FISH: I have no further questions.

JUDGE PLAINE: Is the letter we are talking about the same letter that was identified as GC 2, or is there another letter?

MR. FISH: Yes, GC 2.

Q. (By Mr. Fish) Is this the kind of letter you received, Mr. Iovine? A. Yes, with the exception of the name it was addressed to, it's worded exactly the same.

MR. FISH: Thank you. No further questions.

JUDGE PLAINE: Do you happen to have that letter?

THE WITNESS: I had presented it originally when I made all my logs to my attorney. Everything was presented to him. At this point I don't know where he is.

JUDGE PLAINE: Unfortunately he's not here this afternoon.

MR. FISH: I may have it somewhere in the file. But I think he testified that his letter is the same as this.

JUDGE PLAINE: I think it would be more complete --

MR. FISH: I'll look for it at the next break.

JUDGE PLAINE: Supply it so the record will be complete.

CROSS EXAMINATION

95 Q. (By Mr. Rothfeld) Mr. Iovine, did Bernard Rosenberg ever ask you to assign any work to Local 3 members? A. No. I've never met Mr. Rosenberg.

MR. ROTHFELD: That's all.

JUDGE PLAINE: You're excused. Thank you.

* * * * *

96 HUGH McLAREN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Fish) May I have your full name and address for the record, please? A. Hugh McLaren, Jr., M-c-L-a-r-e-n, 15 Narsissus Drive, Syosset.

Q. Mr. McLaren, where are you employed? A. I am employed by the New York City Board of Education, Division of School Buildings.

Q. What capacity? A. I'm the executive director of the division of school buildings.

Q. Will you briefly describe for us a little bit of your duties and responsibilities in that position? A. I am responsible for the design and construction, maintenance and operation of the physical plants of the Board of Education.

Q. What involvement do you have concerning the awarding of work to contractors for the Board of Education? A. We write the specifications, or have professional engineers write them for us. We advertise the various jobs. We write the resolutions making

97 recommendations to the Chancellor, who in turn makes the recommendation to the Board, who passes upon it at a public meeting

Q. Now, Mr. McLaren, how long have you been in this capacity? A. It will be seven years this December.

Q. During this period of time, Mr. McLaren, can you tell us during the contracts that have been awarded for the electrical contracting work for the Board of Education schools, have they been as a rule awarded to firms whose employees are represented by any one labor organization? A. We actually have large contracts, major contracts so to speak, of which we have about 120 under construction at the present time. And then there are many minor contracts.

The major contracts, I would say 98 per cent of that work dollarwise has been done by Local 3 contractors.

Q. Now, Mr. McLaren, do you recollect a time when you became aware of some problems on some of these job sites in the Board of Education work in New York City? A. This July myself and several other top officials of the Board of Education were away at a conference to study more capability for data processing within the Board to help capability to handle our affairs better.

98 And while I was away, one of the people at the conference had heard that morning that there was a strike of electricians back in the school jobs in the city. I didn't think must of it, and when I talked to the office, they were under the impression it was the minority hiring policies of the city that was causing the problem.

When I got back to the city the following week, I looked into the situation and found out that we were getting tied up in practically most of our major jobs. And I tried to get hold of Mr. Van Arsdale and finally did reach him, I believe it was Friday, July 19th.

Q. Thomas Van Arsdale? A. Thomas Van Arsdale. And he came into the office about 11:30 in the morning.

Q. Excuse me, Mr. McLaren. Prior to the -- your conversation, or during your conversation with Mr. Van Arsdale, did you cause your staff to make an investigation as to the extent of the work stoppages on the various job sites? A. Actually, the week that I was away, it was a hit and miss proposition. They were out one day and back the next, and it seemed that it was dying down. Then all of a sudden, it seemed to be spreading around on the various projects and we did then start keeping records of who was working and who wasn't and we did document it during the whole
99 period this was taking place.

Q. Did you subsequently receive a report from your staff indicating the extent of the work stoppage? A. Yes, I did.

MR. FISH: I'd like this document marked as General Counsel's 7 for identification, please.

(Whereupon, the document referred to was marked General Counsel's Exhibit No. 7 for identification.)

Q. I show you a seven page document which has been marked as General Counsel's 7 for identification. Can you tell us what that is, please? A. This is a report that was made probably after I saw Mr. Van Arsdale, but it does include the date that the various jobs were devoid of electricians.

Q. With the name of the contractor? A. With the name of the electrical contractor involved.

Q. Thank you.

MR. FISH: I move that this document be introduced into evidence.

JUDGE PLAINE: Does it have a date on it?

MR. FISH: It's dated August 16th, that's the date it was finally prepared.

JUDGE PLAINE: Any objection, Mr. Rothfeld?

MR. ROTHFELD: No.

JUDGE PLAINE: In evidence as GC-7.

100 (General Counsel's Exhibit No. 7 for identification, was received in evidence.)

Q. Let's get back now to your conversation with Mr. Van Arsdale. What was the -- A. Mr. Van Arsdale came in.

Q. What was the date? A. It was July 19th, a Friday. It was 11:30 as I recall, and he had with him Mr. O'Hara who I believe is the president of Local 3, and two other officials of the union and I had known Mr. Van Arsdale for quite some time. I met him years ago. And we discussed the situation, and what the problem was.

We --

MR. ROTHFELD: Off the record, please.

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: On the record.

Q. (By Mr. Fish) How did the conversation begin? A. We passed pleasantries for a few minutes, but then I started talking about the problem we were having with electricians walking off the jobs.

And Mr. Van Arsdale was very concerned about the security --

Q. Tell us what he said to you? A. He said to me he was

101 very concerned about the security of his members of his Local No. 3.

Q. Go ahead. A. Because the work available in New York City was dropping, and that he felt that inasmuch as they had done work for -- practically all the work for the Board of Education

for many, many years, that they should continue to do the work for the Board of Education.

Q. Go ahead. A. And I told him that I didn't think we legally could do that. We had to go ahead and award under the State Education Law, and under the Municipal Law of the City of New York to the lowest responsible bidder, no matter what union he belonged to, that we had quite a discussion about prevailing rate of wages, which is a very serious problem in New York City at the present time.

And some contractors, not Wickham, Perone or Iovine, who have been associated with 363, have been found by the controller's office not to be paying the prevailing rate of wages.

Many of these contractors today are now affiliated with Local 3. We have had problems in the area of the painters.

Q. Mr. McLaren, please tell me the discussion -- A. This is what we discussed. I'm telling you what we discussed, Mr. Fish.

102 discussed also the fact we were having a bad problem with the p[illegible]rs where some of the painters who were affiliated with other than the normal organization, old line organizations, labor organizations, were being found by the controller's office not to be -- paying the prevailing rate of wages. I told them that the Board of Education, I knew, would go ahead and would enforce Labor Law 2(20) in the State of New York with all its efforts, and that we would do everything in our power, but we could not go ahead and only award to contractors who were affiliated by contract with Local No. 3.

Q. Could you backtrack a little? Could you tell us how the subject or the name of Wickham and Perone first came up in that conversation, if you can recall? A. In that conversation, I did say -- I told Mr. Van Arsdale, well, you must be talking about the one and

two man shops that do a lot of our maintenance work, because we have a lot of very, very small contracts, contracts less than $5,000.

And he said no, he wasn't. He said he was talking about Wickham and Perone.

Q. What about Wickham and Perone? A. He said -- no, he didn't mention Wickham and Perone first. He says -- it wasn't him. It was one of the other people there, I believe. He said what
103 about the job at East Tremont Early Childhood Center, 8 Richmond, and 41 Richmond -- those are number of schools.

Q. Okay. A. And he said who is doing those? I says, well, Wickham, Perone. I, up to that point, did not know that Wickham, Perone was not affiliated with Local 3, to my knowledge, because I don't go ahead and get into some of these things too deeply, I mean on the prequalification work which we do.

I told him I did know that Mr. Iovine, who was on 175 in the Bronx, was non union. That had been brought to my attention at the time we awarded it, and we didn't see any way, based upon the qualification Mr. Iovine had, not to go ahead and recommend the award to him.

We talked quite a bit longer. I think we talked roughly to about 2:30. Always doing the lines that I would be willing to do everything that I possibly could to see that the prevailing rate was being paid so that the contractors who had affiliations with Local 3, were not unfairly bid against.

But he was pretty adamant that he wanted assurances, definite assurances from the Board of Education that would go ahead and assure his men of job security. He left about 2:30. I went out, had some lunch, I came back; naturally I'm thinking about the thing.

104 I've got 120 jobs under construction which is going to go ahead and be shut down. I had 18 schools --

MR. ROTHFELD: Objection, and move to strike what's going to be shut down as not binding on respondent.

JUDGE PLAINE: I think they had been shut down at the time.

MR. ROTHFELD: No such testimony, Judge. There's no testimony that a single job had been shut down.

JUDGE PLAINE: What were these work stoppages that you were testifying about?

MR. ROTHFELD: Electricians only, Judge.

THE WITNESS: So the electricians, but the other trades can't work without the electricians.

JUDGE PLAINE: I don't think your objection is well taken, Mr. Rothfeld. I think this man is testifying about stoppages that already had occurred, and this is what the conversations were about. I think he should continue the way he was testifying.

MR. ROTHFELD: If Your Honor please, the witness had made an aside which was not part of any conversation, I believe.

JUDGE PLAINE: I thought this was something that he was relating back and forth with the Van Arsdale and company, and associates.

105 MR. ROTHFELD: I think the record will show differently, Judge.

Q. (By Mr. Fish) Are you still talking about the conversation -- A. No. I said I was thinking about this at lunch. That's exactly what I said.

Q. Leave your -- Mr. McLaren, please direct yourself back to the conversation with Mr. Van Arsdale. A. I finished.

Q. Well, I have some more questions about that conversation.

Do you remember anything else being said at that conversation that you haven't told us about? A. Oh, I did say that I would take what he had spoke to me about, I would go ahead and speak to the Deputy Chancellor, who I'm sure would take this to the Board, what their feelings were, and that we would get back to them. I believe that's the way that we finally ended the conversation that day.

Q. Did you specifically ask him during this meeting what it would take to get the men back to work? A. Yes. As I said before, he wanted full assurance from the Board of Education that would give job security to the Local 3 people.

One other thing that I forgot. I didn't know during the conversation -- he informed me that his people had been over to see the mayor, Deputy Mayor Cavanagh, Stanley Buxbaum, who is, I believe, First Deputy Corporation Counsel, and Judge Burke, who is the Corporation Counsel for the city, and had discussed this situation with them.

106

Also he was under the impression, he told me, that the Board of Education was a city agency, which I informed him it was not. And I was a little put out because I had met Tom quite a few years before and I always had a pleasant relationship with him and his people, and I was a little put out that he never come to me before he pulled the men off the various jobs.

Q. Is there anything else said at the meeting? A. I think that is roughly it.

Q. Was there anything at all said about whether or not there had been a union meeting in which this was discussed? A. Yes. In the meeting he did tell me that there had been a union meeting of July 8, I believe it was.

Q. What did he tell you? A. When this action, the action of the stoppage was authorized against the Board of Education and

the City, I believe, he did. And that some of the men had jumped the gun, that was the reason it was kind of a spasmatic start to the stoppage.

107 Q. Now, what did you then do, Mr. McLaren, after this meeting with Mr. Van Arsdale? A. Well -- as a result of the meeting, I started thinking of what I could do to go ahead and get the men back to work, and the fact that we had 18 schools that were due to open that September, and the other jobs would all be slowed up if we didn't do something quickly.

And I got the contract out and in going over the contract, we came across -- we didn't know about Article 5, and we reread it, and we felt that that Article gave us authorization to go ahead and have them stop work at least until we could go ahead and try and get everything going on. It was better to have three or four jobs stopped, than 120. So we went ahead, and I called one of the attorneys in the Board of Education, who thought it was a proper thing to do.

And also an attorney in the Corporation Counsel's office, who also informed me he thought it was the proper thing to do.

As a result, we sent out the letters which --

Q. Is this -- A. July 19th.

Q. -- General Counsel 2, is this a copy of the letter that you sent out to -- A. These are the letters that went out.

108 Q. Who did you send them to? A. One went to Wickham, Perone, and the other went to Eugene Iovine. Subsequent to that, they went to all contractors who, as far as we knew, were not affiliated with Local 3.

Q. Were there others -- A. Others in the maintenance area. All on the smaller contracts, not larger contracts.

If I may continue, in sitting with the First Deputy Corporation Counsel, Mr. Buxbaum, he felt that the two attorneys were in error,

and that this clause was not for the purpose that we were using it, and, therefore, we should go ahead and rescind our action. Which we did on August 6.

Q. Subsequent letter -- A. Subsequent letter which has also been introduced as evidence.

Q. Okay.

JUDGE PLAINE: Who is Mr. Buxbaum?

THE WITNESS: Mr. Bauxbaum is First Deputy Corporation Counsel.

Q. Now, did you send out any letters to any of the Local 3 contractors who were out on strike, or whose employees were out on strike? A. Yes. I don't know whether that came before my
109 next meeting, or after my next meeting with Mr. Van Arsdale. I don't recall just when it was. But there were other letters that went out. There was a meeting with the Board. And the Board was of the opinion that this is not a dispute between Local No. 3 and the Board of Education, but a dispute between Local No. 3 and their contractors. And --

MR. ROTHFELD: Excuse me, may we please go off the record, Judge?

JUDGE PLAINE: Yes.

(Discussion off the record.)

JUDGE PLAINE: On the record.

You may proceed with the examination, Mr. Fish.

A. I think I said that the Board had decided this was a dispute not between them and Local 3, but between Local 3 and their contractors.

At a meeting where I believe First Deputy Corporation Counsel was there, if I'm not mistaken, and myself, counsel to the Board, most of the Board members, Dr. Gifford, the Deputy Chancellor,

and I think Mr. Anker, the Chancellor, I'm not positive on that. And at that meeting, a letter was composed based upon the fact that they felt the right to give an extension of time was permissive and not required. On that basis they felt that they would withhold
110 extensions of time to the contractors based upon the fact that this was their dispute which they were doing nothing about.

And those letters were sent out.

MR. FISH: I'd like this document marked as General Counsel 8 for identification, please.

(Whereupon, the document referred to was marked General Counsel's Exhibit No. 8 for identification.)

Q. I show you General Counsel Exhibit 8 for identification. Would you tell us what that document is? A. This is the letter that was composed by the Board, and which we sent out from our office certified mail to all contractors doing major work with the Board of Education.

Q. These are the ones whose employees were out on strike? A. That's correct. By accident, it went to a couple that it wasn't supposed to go to, but that was straightened out.

MR. FISH: I move this document be introduced into evidence.

JUDGE PLAINE: This was a letter to all contractors whose work had been affected by the work stoppage? A. These are the contractors, the electrical contractors whose electricians were not working.

JUDGE PLAINE: I see. Any objection to this letter?
111 MR. ROTHFELD: No.

JUDGE PLAINE: In evidence as GC 8.

(General Counsel's Exhibit No. 8 for identification, was received in evidence.)

Q. (By Mr. Fish) Prior to sending this letter out, Mr. McLaren, and after your sending the letters to Wickham and Perone and Iovine to get off the job, did you have a conversation with Mr. Van Arsdale about that, about the action that you took? A. Well, we had met on Friday, and I had a meeting that week out of the office. I believe it was then that I got him on the phone, and spoke to him.

And I said -- well, my recollection is I said that "Look, I've removed the contractors who are not members of Local 3, and I'm hoping you go back to work on the basis of this because we need these schools very, very badly for September."

Q. What was Mr. Van Arsdale's response? A. He said he'd look into it but he did agree he'd like to have a meeting with Mr. Gifford. And one was arranged, I believe it was Thursday at 4:30 in the afternoon at Dr. Gifford's office.

JUDGE PLAINE: Who is Dr. Gifford?

THE WITNESS: Deputy Chancellor of the Board of Education, my immediate superior.

112 Q. What happened? A. We came in, Mr. Van Arsdale came in again with Mr. O'Hara, and there was nobody else with him and Dr. Gifford and I sat down with him. And Mr. Van Arsdale went over pretty much what he had gone over with me. But this was the first time I feel that I heard, really heard about a layoff list. It was discussed. His idea was that --

Q. Excuse me, you say he went over a lot of the -- A. The background that we had gone over the previous meeting --

Q. Tell us. A. The same things we brought up in the previous meeting.

Q. Such as what, please tell us. A. Well, the fact that he wanted security for his men, that he wanted assurances from the

Board of Education that Local 3 men would not be put out of work.

Q. Was anything specifically mentioned at this meeting about any of the other non local 3 contractors? A. No, I don't believe there was.

Q. Go ahead. A. He reiterated the other things he had said, he felt inasmuch as they always did Local 3 work, Local 3 did most of the work, they should continue to do it.

113 However, we did come up with this idea -- it was very, very hazy at this point -- that there would be some kind of a layoff list, and what would happen is, that they would take the force of the Board of Education, all of the contractors working for the Board, and that would be a Board of Education force. And as a man was let go, he would go on this layoff list if he so desired.

Once this man was laid off and there was a list, a new contractor would come in, awarded a new job, he would have to take from the layoff list. If there is nobody from the layoff list, you could bring in whoever you want. And this layoff list would include Local 3 people, it would include Local 363 people, and non union people. So finally when we finished with Mr. Van Arsdale, Dr. Gifford asked could he bring in something in writing so we could really discuss this with the Board. That really finished that conversation that day.

Q. What was the date of this meeting? A. I believe it was the following Thursday, it -- it would be probably the 25th. I think probably the 25th is my recollection.

MR. ROTHFELD: Of July?

THE WITNESS: 25th of July. Very little happened after this. The only other meeting there was after this was a meeting that we

114 were asked to attend in the Mayor's office with Mr. Van Arsdale

was there. It was Deputy Mayor Cavanagh who ran the meeting. And this layoff list was discussed further at that meeting.

Q. About when was this? A. I'm not sure. From what I can figure from going back on things, it was somewhere around the middle of August, sometime maybe two or three -- maybe the third week in August, sometime in there. At that meeting -- I was never given a copy of this layoff plan in writing.

I was shown a small mimeographed sheet at one of the last hearings that was held on this case. I had never been given a copy of that thing. I did not have it in my files. And I think it was given to the Mayor's people, and whether or not the Board of Education people have copies, I don't know.

But this laid the thing out. But it was not still a definite plan. There was never anything definite given to us.

JUDGE PLAINE: When you say layoff list, was it a layoff list of employees or contractors?

THE WITNESS: Yes. The idea would be, Your Honor, that the Board of Education maybe has 500 electricians work on the various jobs and supposing we're finishing up a job that had 10 electricians on them and the 10 electricians get laid off, they would be put on a

115 layoff list whether they belong to 363, non union and Local 3. And he always talked in those numbers. And he was always talking for security for his members, because there are a lot of people out of work in the city, New York today, there's no question about it.

Q. (By Mr. Fish) Okay. Getting back to your General Counsel's 8, the letter sent to the Local 3 contractors on strike, did you receive any responses to this letter from any of the contractors? A. Yes. We got responses from many, many contractors, many of them almost word for word the same.

It would appear that it was standard letter that was suggested by maybe the association or somebody. Maybe they have the same lawyer, I don't know.

MR. FISH: I'd like this marked as General Counsel's Exhibit 9A, 9B, 9C and 9D.

(Whereupon the document referred to were marked General Counsel's Exhibits 9A through D for identification.)

Q. I show you General Counsel's 9A, B, C and D for identification. Please look at those letters and -- those documents and tell us what they are, please. A. These are letters which were sent to us from the various contractors who we had written to all referring to our certified letter, which we previously had sent to them.

116

MR. FISH: I move that these documents be introduced into evidence.

JUDGE PLAINE: Any objection, counsel?

MR. ROTHFELD: None.

JUDGE PLAINE: In evidence as GC 9A, B, C, D respectively.

(General Counsel's Exhibits 9A through D for identification were received in evidence.)

Q. (By Mr. Fish) How long did the work stoppage continue, to the best of your knowledge, Mr. McLaren? A. Well, roughly it was about two months. After we got the original temporary injunction, the foremen started to appear on the jobs, but then when the Judge did make it a permanent -- more permanent temporary injunction, let me put it that way, we now pretty much have things the way they were before this whole stoppage started, and that's been in effect, I would say, for the last three weeks approximately.

MR. FISH: At this time, I move to introduce into the record -- first, I'd like to have marked as General Counsel 10 for identification, a copy of the order granting temporary injunctions signed by Judge Edward Neaher on September 13th, 1974, of the Eastern District, Federal Court.

117

(Whereupon the document referred to was marked General Counsel's Exhibit No. 10 for identification.)

MR. ROTHFELD: I object to the receipt of this temporary injunction in evidence on the ground that all it purports to show is that the Judge believed that the Regional Director had reasonable cause to believe under Section 10(1) of the Act that this violation had taken place, which is not proof in any respect that the violation took place, and of course, Your Honor is well aware of the fact that the predictability rate with respect to 10(1) temporary injunctions being signed is rather high. It doesn't really prove very much.

JUDGE PLAINE: It proves whatever it stands for.

MR. ROTHFELD: So would any other exhibit being offered in evidence, and on that basis you'd exclude nothing. Things either are relevant or they're not.

JUDGE PLAINE: Anyone familiar with the law understands that the District Court Judge does not make the final decision, that he makes a temporary decision based on probable -- a probable cause showing, and that's what the injunction is based on.

MR. ROTHFELD: And, therefore, it's irrelevant in my opinion.

JUDGE PLAINE: No, it's not necessarily irrelevant at all.

118

MR. ROTHFELD: Well, it's not probative.

JUDGE PLAINE: It has worth in the chain of events.

MR. ROTHFELD: Under these circumstances, Your Honor, with this kind of procedure, there's a question as to whether it pays

for respondents to come in at these hearings at all. The District Court Judge always signs these things and there's no reason why one stamp should follow another.

JUDGE PLAINE: I've been involved in cases where the District Court Judge did not sign something.

MR. ROTHFELD: Not in a New York area, Judge.

JUDGE PLAINE: I don't recall the particular area -- I think -- in fact, I think I did have one out of the New York Regional Office, where the court refused to grant the temporary injunction, so you can't derive anything from those statistics. I'm simply suggesting that you know and I know the basis upon which these orders are issued.

The law is clear on it. There are dozens of cases that have stated what the basis for the issuance of the injunction is, and there's no use you and I debating. But it is part of the chain of events in these cases, and in this case particularly. So I see nothing wrong about admitting it into evidence.

It's in evidence as GC 10.

119 (General Counsel's Exhibit No. 10 for identification, was received in evidence.)

Q. (By Mr. Fish) Mr. McLaren, were you ever present at a meeting of the -- public meeting of the Board of Education in which an award of a contract to Wickham and Perone was discussed? A. Yes.

Q. Tell us about that, please. A. At the meeting --

MR. ROTHFELD: May we have the --

Q. Tell us when it was and --

MR. ROTHFELD: Time and place, please.

Q. -- and what was said, and what happened? A. Let me

get my calendar. At a public meeting of the Board of Education at 8:00 p. m., on October 16th there was an item on the calendar --

MR. ROTHFELD: If Your Honor please, I move to strike testimony of October 16th based on your own prior rulings. Outside the framework.

MR. FISH: Your Honor, I think this testimony will relate somewhat to the intent of respondent in its prior actions to show that it has had an ongoing dispute with Wickham and Perone, and that an object of its work stoppage was its dispute with Wickham and Perone.

120 MR. ROTHFELD: If Your Honor please, either what's sauce for the gander in this report or it isn't. We have had lengthly conversation on record with respect to the time framework of this complaint. I made a sincere effort to expand that time framework by a few weeks. Your Honor did not permit me to do so. And I respectfully submit that October 16th, being last week, is outside the scope based upon your own ground rules laid in this case an hour ago.

If Your Honor wants to change the rules in midstream, I will make my motions to put Mr. Biele back on and keep going on the basis of what I was excluded from eliciting.

JUDGE PLAINE: The ruling that you're now discussing related to the question of whether there was a new labor dispute in which Biele and associates were involved with Local 3, a current local -- a current labor dispute. As I understand counsel for the General Counsel, he is now relating a board meeting or action that related to the dispute that is involved in this case in the period July through September.

Is that my understanding of what you are talking about Mr. Fish?

MR. FISH: Yes. It is our belief that this testimony will demonstrate the continuing dispute with Wickham and Perone.

121 MR. ROTHFELD: If Your Honor please, my -- the testimony which I did succeed in eliciting before I was stopped, and my offer of proof clearly indicated respondent's contention that the state of affairs for the last month between Wickham and Local 3 was not a new labor dispute, but was something which related back to Mr. Rosenberg's conversation with Mr. Biele concerning which he testified in July of 1974, and was not something new, but was something old, and was the basis for our denial of the two paragraphs in that complaint.

I say again, what's sauce for the goose, should be sauce for the gander. I didn't state that there was something new here. Your Honor seems to have inferred that.

JUDGE PLAINE: You were getting into proof of a picketing and labor dispute by Local 3 people or people involved in a dispute with the Teamsters Union, and apparently it was not related to the period in which we have had the stoppage that came out of the Board of Education orders to these people.

MR. ROTHFELD: Well, if Your Honor please, my position was that this was the same dispute, there was no dispute with the Teamsters, it was not a strike by Local 3, it was a strike, and is a strike, by Wickham's employees wearing Local 3 strike banners,

122 and it was not something that originated after the framework of this complaint, but went way back.

Now, counsel for the General Counsel is contending that a meeting which occurred last week also relates back. If Your Honor wishes to be inconsistent, I can't help that. I can only make repeated reference on the record to the extent that I'm permitted to -- my feelings in this situation.

JUDGE PLAINE: I recognize your feelings. And I recognize the surface appeal of your argument, but I'm not so sure it correctly

describes the fact. I'll allow this testimony subject to connection. I'll permit it to be stricken if it's not.

MR. ROTHFELD: Well, Your Honor, I wish you would have allowed my testimony subject to connection and stricken if it were not.

JUDGE PLAINE: Well, we gave you some room and you weren't able to make it and we'll let it go at that.

Go ahead, counsel.

Q. (By Mr. Fish) Please tell us what happened at that meeting.
A. At the meeting there was an item on the calendar, the August Martin High School, out in Baisley Pond, and this is a school that is being done over in connection with the aviation industry. And it's a
123 stage job which certain stages have to be done at certain times and we didn't have enough money to do the whole thing.

What was on the calendar was the general construction, the plumbing work and the electrical work with the H and V to be awarded after the capital budget amendment is approved. Because that isn't needed at the present time.

The low bidder on the electrical work was Wickham Perone. The project runs a little over a million dollars. Local 3, Mr. Rosenberg, was at the meeting, and they objected.

They asked that it be laid over based on the fact that they had people there who stated that they had not been paid prevailing rate of wages, they had people there who claimed they had paid kick-backs and in general they wanted this laid over until such time as the Board could investigate it.

The job happens to be a very urgent one. I did urge upon the Board that it be awarded because of the fact that we did have a stay order signed by Judge Stewart which requires that we not -- that we

don't hold up any awards to Wic[illegible]n Perone for labor reasons. And on that basis, the Board awarded it, subject to it receiving a copy of the stay order, the temporary -- the injunction Judge Stewart had signed. And that order was sent over the next morning and the Board did pass the resolution.

124 MR. FISH: I have no further questions.

* * * * *

130 CROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. McLaren, you contract out in part pursuant to Section 101 of the Municipal Law, is that correct?

131 A. That's correct.

Q. Now, is it correct, sir, that the General Municipal Law permits you to hire electricians direct when you choose and to contract out as much as you wish, isn't that right? A. No. I'm not sure the wording of it right now. We do have some of our own electricians. We have about 70 electricians on our own payroll.

Q. Now, sir, these 70 electricians are bargained for by Local 3 with the Corporation Counsel of the City of New York with respect to determining their prevailing wage rate, isn't that correct? A. No. I believe it's with the Controller's office, not the Corporation Counsel.

Q. I'm sorry, I meant the Controller's office of the City of New York. A. Yes. The prevailing rate is set by the Controller's office.

Q. And that is pursuant to negotiations by Local 3 with the Controller's representative concerning these electricians employed by the Board of Education, is that correct? A. I don't know that as a fact. I would assume that is a fact because we are not a party to those negotiations.

132 Q. But you do follow the results, do you not? A. Yes, we do.

Q. And Local Union No. 3, through its representatives adjusts grievances for these approximately 70 electricians with the Board of Education, does it not, through the shop stewards?

* * * * *

MR. ROTHFELD: Judge, Section 101 of the General Municipal Law of the State of New York gives the Board of Education leave to hire electricians direct or to contract out the work to electrical contractors.

Those are the two options. Mr. McLaren or the Board of Education chooses to contract out the bulk of its work to electrical contractors. That is the option of the Board of Education.

The issue here is whether or not -- one of the issues here, is whether or not there is an existing labor dispute between respondent and the Board of Education.

General Counsel contends that there is no labor dispute, that the Board of Education is a secondary, a neutral. Respondent contends
133 that it has a primary labor dispute, not only with the electrical contractors, but also with the Board of Education.

JUDGE PLAINE: In what regard?

MR. ROTHFELD: In that the Board of Education already negotiate with Local 3, and adjust grievances with Local 3 concerning electricians.

* * * * *

142 Q. (By Mr. Rothfeld) Mr. McLaren, do you know of any law or regulation which compels you to limit the number of your direct employees to 70 -- direct electricians to 70? A. Actually I'm limited to the number of lines I have in the budget. These are listed

in the expense budget. I'm limited to that number of lines when that budget is adopted.

Q. Apart from budgetary requirements, do you know of any legal requirements which prevent you from deciding when to subcontract and what work to hire electricians direct?

MR. BABISKIN: I'm going to object. I think that we're in the area of calling for Mr. McLaren to give some sort of legal conclusion, which I don't think --

JUDGE PLAINE: He may not be qualified.

MR. ROTHFELD: He can say so if he isn't.

A. Legally --

JUDGE PLAINE: Just a minute. What troubles me goes a little more in depth to your problem. I don't think your questioning in regard to direct employment really meets the problem that you are raising with me.

* * * * *

144 JUDGE PLAINE: My feeling now, and this is a ruling, I don't regard the direct employment relationship between the 70 or more electricians and the Board of Education as related to the dispute in the case before us.

I will allow you to attempt as far as you can reasonably go to explore your theory that your client was attempting to obtain something in the nature of a Section 8(e) construction type waiver is the word, and if you want -- if you have any relevant questions to that of this witness, I'll allow it.

145 MR. ROTHFELD: Your Honor, I respectfully except to your ruling on the grounds that while there are at the moment 70 employees directly employed by the Board of Education whom respondent represents, there is no reason why there should be any limit to those 70.

But as I -- Your Honor having ruled, I must desist, and reserve my arguments.

Q. (By Mr. Rothfeld) Now, Mr. McLaren, in July of 1974, was it you, sir, who made an effort to persue and reach Thomas Van Arsdale, or was it he who made an effort to reach you? A. I was trying to get him. It took us a time to get together. I think I called him first. It could be the other way around, I'm not positive.

Q. Isn't it true that you made a substantial effort to have an appointment with Mr. Van Arsdale and not the other way around? A. Yes, I think it is. Yes. I tried to get an appointment with Mr. Van Arsdale.

Q. And it took you several days to succeed? A. That's correct.

Q. Fine. Now, did Mr. Van Arsdale tell you that on July 11, 1974 he had sat down and talked at great length with First Deputy Corporation Counsel Buxbaum, B-u-x-b-a-u-m? A. Yes. I mentioned that in my testimony.

146 Q. Yes. But you didn't mention the date, sir. A. I didn't know the date. I don't know if it was that day. It was something before I sat down with him.

Q. It was sometime on or around July 11, 1974? A. I don't know. It was sometime before he sat down with me on July 19.

Q. And did he tell you that his conversation with the Deputy Corporation Counsel related to obtaining job security for people now working on the Board of Education job sites? A. He told me also the City sites and the Board of Education. It was then just the Board of Ed. He was looking for job security which I testified to.

Q. Fine. Now, on July 19, when you talked with Mr. Van Arsdale, did you in any way tell him that you were going to have telephone calls made to Mr. Biele or Mr. Iovine? A. No, I did not.

Q. Did you in any way mention to Mr. Van Arsdale that you were going to send letters out to these gentlemen telling them to leave their jobs? A. No, I did not.

Q. Fine. Is it true that on July 19 Mr. Van Arsdale told you that he wanted assurances from the Board of Education with
147 respect to the future work of the Board of Education, and I underline the word future? A. Yes. I will say that that is pretty much what his words were, he was talking future work.

Q. Future work, fine.

Now, it is true, sir, is it not, that after you chose to send letters and have telephone calls made to knock Wickham and Iovine off the jobs, that did not in any way result in the electricians coming back to work? A. That's true.

Q. They stayed out during the entire month that Wickham stayed out, did they not? A. They stayed out the entire time until the injunction was obtained, which is sometime late in September, the middle of September. They were out roughly about two months.

Q. Right, sir. And during the entire time that Wickham and Iovine were out, Wickham and Iovines being out did not in any way bring any electricians back, isn't that right?

MR. FISH: Your Honor, I object. There's no testimony that any employees of Iovine were out.

MR. ROTHFELD: I'm sorry, there is not such testimony?

MR. FISH: Mr. Iovine testified his employees continued to work.

MR. ROTHFELD: I'm sorry.

148 Q. (By Mr. Rothfeld) Isn't it true, sir, that Wickham's employees being out for a month did not result in any electricians coming back? A. It did not result in any electrician coming back. There

was a few electricians that did not go out. They didn't all go. But there were a few that did stay and work; very, very few.

Q. Those that did go out -- A. They did not come back.

Q. None came back during the entire months of Wickham's absence? A. That's correct.

Q. Fine. Did Mr. Van Arsdale say to you with respect to the layoff list that the group of electricians presently working for the Board of Education, and I stress presently working for the Board of Education whether they worked for Local 3 contractors, Local 363 or non union, would become the labor pool of the Board of Education and as a man is laid off, he would go on the list in rotation? A. I believe I testified to that. And I don't think that occurred at the first meeting. I think that was at the meeting with Dr. Gifford, if I remember correctly.

Q. You mean on July 25? A. July 25.

149 Q. Okay.

JUDGE PLAINE: Is this to be a pool for direct employment or for contract employment?

THE WITNESS: As I understood it, this would be a pool for contract employment, not direct employment. Because in direct employment we have to take off a Civil Service list, and whatever the list is, those are the men that come to us.

Q. Now, would you say, sir, that the dispute between Local 3 and the Board of Education was a dispute involving job security?

MR. FISH: Objection.

MR. BABISKIN: Objection.

JUDGE PLAINE: Objection sustained.

MR. ROTHFELD: Respectfully except. I think the witness is competent to testify about that.

Q. I ask you to read this page of a transcript, top half of the page, to yourself.

JUDGE PLAINE: You mind identifying for the record what the witness is using?

MR. ROTHFELD: Page 76 of the witness' testimony in Federal Court.

JUDGE PLAINE: This is the suit that involved the granting of the temporary injunction?

MR. ROTHFELD: Yes, sir.

150 A. I think this is roughly what I've been testifying to.

Q. Now, in retrospect, is it now your recollection that Mr. Van Arsdale's concern with the layoff list may have been mentioned in your July 19th meeting? A. I stated that before, I don't recall. It might have been mentioned at the July meeting, I never denied that. But I don't recall. The first I remember of it really is the meeting with Dr. Gifford.

Q. You mean July 25th? A. That's right.

Q. It may have been the July 19th meeting? A. It might have been mentioned at the July 19th meeting, but I felt it was the July 25th meeting and I think this is the way I've testified all the way through.

Q. All right. Now, sir, during all your meetings with Mr. Van Arsdale, the electricians who had walked off had no contract -- were not covered by any collective bargaining agreement, isn't that correct? A. That I -- that information I did obtain from various contractors who I know quite well, and told me that an agreement had not been signed yet with Local 3 by the various associations.

Q. All right. Now, under this layoff plan, was it understood that Local 363 electricians, and non union electricians could work on

151 Local 3 contractors jobs and Local 3 contractors could work on

Local 3 -- I'm sorry, members would be able to work on Local 363 contractors jobs? A. That was the general gist of what he said, yes.

Q. Thank you.

Now, did Mr. Van Arsdale also say that he, with respect to this rotating layoff list, did not seek preferential treatment for Local 3 as opposed to similar treatment for any other men would work for contractors doing Board of Education work?

MR. BABISKIN: I object, Your Honor, because counsel appears to be reading from something. I think that the witness is entitled to look at it before he answers that question. And Mr. Rothfeld said all right --

MR. ROTHFELD: If Your Honor so desires, I will give the witness the page, but I think his memory is good enough. He hasn't claimed that his memory is exhausted.

JUDGE PLAINE: Well, I -- do you have a problem with this?

THE WITNESS: No, I don't.

JUDGE PLAINE: All right. Answer the question.

A. What was the question again, I'm sorry.

Q. (By Mr. Rothfeld) Is it true that Mr. Van Arsdale said
152 that he did not want preferential treatment for Local 3 as opposed to similar treatment for any other men who had worked for contractors doing Board of Education work? A. Whether or not he actually ever said that, I don't recall, but at no time during our conversations did he ask for preferential treatment for Local 3 or did -- nor do I remember him saying that he wanted preferential or didn't want preferential treatment.

JUDGE PLAINE: That's in connection with the so-called layoff --

THE WITNESS: Layoff, that's correct.

Q. And did Mr. Van Arsdale say that his job security plan would cover anybody who did work for the Board of Education?
A. Yes. The whole idea of the plan as he laid it out to us, we never did get it in written form, it was very shetchy at the time, was that as a man was laid off, he'd go on that list. And the man who was on the top of that list would be the first man hired. That's the way he talked about it.

* * * * *

159 Q. (By Mr. Rothfeld) Now, Mr. McLaren, when electricians who now complete a job at a school are laid off because the job is
160 finished, is there any guarantee of reemployment at this time by the Board of Education or by the electrical contractors who have contracts with the Board of Education?

MR. BABISKIN: I still have an objection.

JUDGE PLAINE: What's your objection.

MR. BABISKIN: First of all, they're not employed by the Board of Education. There is no employment relationship of these people with the Board of Education. There is no employment relationship between these workers that is posed in the hypothetical question posed on Mr. McLaren by Mr. Rothfeld, so it's clearly improper on that front. There is no employment relation. And second of all, any guarantee that would be made as far as employment goes, would have to be made by the employers and Mr. McLaren is not their employer and he is not the one to testify to that.

So, the question is clearly improper. And certainly not within the scope of the direct testimony of this witness.

MR. ROTHFELD: Sir, I don't believe you're going to limit me to the scope of direct testimony.

Secondly, in order to prove the -- that the object was a layoff plan, my first step is to try to show the need for such layoff plan in order for Your Honor to make a finding as to whether or not the

161 layoff plan was a rational reason for what was done. And my question related to the heart of this matter, whether or not these very electricians who specialize in school work have any guarantee of employment when the job finishes at one school, through any source.

MR. BABISKIN: Excuse me, Your Honor, there's been no testimony whatsoever that there are electricians specializing in anything.

MR. ROTHFELD: Not yet. The hearing isn't over.

JUDGE PLAINE: Well, I guess you don't even need testimony to the effect that the school Board doesn't guarantee these people who work for contractors employment.

MR. FISH: We'll stipulate to that.

JUDGE PLAINE: Am I right, Mr. McLaren? Do you guarantee work?

THE WITNESS: No. We cannot guarantee anybody any work.

JUDGE PLAINE: We're talking about employees now, employees of contractors.

THE WITNESS: The employees of contractors we have nothing to do with. Even our own employees today with the budget situation the way it is, aren't sure whether or not lines will be cut or not.

JUDGE PLAINE: Does that give you your base?

162 MR. ROTHFELD: It's the best I can do in this situation, instead of getting answers.

JUDGE PLAINE: What better could you get?

MR. ROTHFELD: Sir, my questions are -- I believe I'm entitled to get answers to my questions and not someone elses.

JUDGE PLAINE: As counsel pointed out, there were a lot of suppositions in your questions that really made the questions improper. I'm trying to cut through it.

Q. (By Mr. Rothfeld) Sir, is it true that jobs are finishing in public schools nearly everyday? A. I wouldn't say everyday. But like we just opened -- we are opening now -- in the process of opening about 14 schools. It wouldn't be everyday.

Q. It would be pretty frequently? A. There's men hired and laid off regularly in the various different trades, there's no question about it.

Q. This goes on constantly, does it not? A. It's constant. It's a regular thing throughout the whole building industry in the city.

Q. At the moment there is no arrangement for job security for these electricians in these schools by anybody, is that correct? A. By anybody, that's true.

163 Q. Okay. Now, do you know if any -- of any reason legally why the Board of Education can not require such job security?

MR. FISH: Objection.

JUDGE PLAINE: You're going to have to get the Board's lawyer.

MR. ROTHFELD: The witness has then claimed lack of competence to testify.

JUDGE PLAINE: I rather not accept his testimony.

MR. ROTHFELD: In spite of the witness' background?

JUDGE PLAINE: Yes.

MR. ROTHFELD: And he supervised contracts half his life?

JUDGE PLAINE: We have already had an experience in this case based on Mr. McLaren's testimony that he thought a particular

contract clause applied to the termination of work, and his legal counsel overruled him. That was his testimony. So I don't think we ought to play around with that.

MR. ROTHFELD: All right.

Q. Mr. McLaren, sometime in August, there was a meeting which you attended in Deputy Mayor Cavanagh's office. A. Yes.

Q. And almost all the members of the Board of Education were there? A. I don't know if they were all there. Many were there, yes.

164

Q. And Dr. Bernard Gifford was there? A. Yes, I believe he was.

Q. And at that meeting, did Mr. Van Arsdale talk at length about what he wanted in view -- with respect to a layoff plan for job security? A. Yes, he did.

Q. Okay. Now, when you had your first meeting with Mr. Van Arsdale on July 19th, did you ask him specific -- well -- specifically what the reason for the work stoppage was? A. Yes, I did.

Q. All right. Now, did he tell you that it was the job security of the members? A. Yes. All along I've testified throughout that he was after job security for the members of Local 3.

Q. Okay. A. And that was the reason for the stoppage.

Q. And did he indicate to you that in order for the work stoppage to cease, it would require assurances from the Board of Education on the job security of Local 3's members? A. That's correct. I testified to that previously today.

165

Q. Yes, sir. And that is job security for all electricans who work on the Board of Education? A. I don't believe he ever put it in those terms. I believe he always talked security of Local 3 members.

But when the layoff plan was laid out, it was as I said, it did not discriminate against 363 members or non union members, for that matter.

Q. All right. Now, did Mr. Van Arsdale indicate that this layoff plan would create a stable force of workers for the Board of Education which would be composed of non union people and Local 363 people as well as Local 3 people who are presently employed on Board of Education jobs? A. He said -- yes, he said that.

Q. Okay. Now, did any of the electricians or any of their agents make any effort to prevent ingress or egress on any job site? A. No. We didn't have any labor strife in the field of that type.

Q. And there were no pickets? A. There were no pickets to my knowledge.

Q. And the carpenters kept working, did they not? A. No. They didn't. Because I was getting calls regularly from the general contractors because they couldn't go ahead because the electricians
166 weren't laying any pipe, and we couldn't pour any concrete, so everything started grinding to a halt. I know efforts were made by the PTA to have the electricians go back to work.

Q. Now, about how many contractors made those calls to you, by number? A. Caristo, C-a-r-i-s-t-o, Mars-Normel, John T. Brady. Various parents groups where schools were not going to open.

Q. Sir, I'm not asking you about parents groups. They don't really know what's going on in the construction field, do they? A. Yes, they do. Many of them attend our job construction meetings since -- things are different since decentralization.

Q. Sir, you've mentioned three contractors, and this was -- I'm sorry -- A. I was not finished.

Q. Sorry. A. Brady, A.D. Herman, H-e-r-m-a-n. They were all very concerned because their jobs were held up.

Q. Now -- all right. You've mentioned five contractors. And this involved over 100 job sites, did it not? A. You must remember that it only involved about five contracts -- five contractors do our very large jobs, so it practically involved all of the larger jobs
167 that we had under construction at the time.

Q. All right. Did you yourself inspect the job sites? A. No. I was getting reports from my field people on this, and getting reports whether or not there were electricians on the jobs.

Q. Now, do you know for a fact that the concrete men stopped working, or are you speculating? A. Oh, no. I know that for a fact.

Q. Do you know how many concrete men stopped working? A. No, but I can get those figures. We can get what jobs were stopped because we couldn't go further.

Q. Do you know whether any carpenters stopped working? A. Yes. There were men laid off.

Q. Do you know how many? A. I don't know offhand. The contractors would know that. We don't know how many men were laid off, but that was what they were complaining to me about.

Q. They were laid off by their own people? A. They were laid off by the contractor because the electricians did not have his pipe in the slabs and the concrete could not be poured.

Q. But your testimony is then that the carpenters kept working until their own employers left them off? A. There was
168 no work left, that's why they were left off.

Q. They kept working until they were laid off? A. They kept working until there was no work left to be done.

Q. And the laborers also kept working until they were laid off? A. Until there was no work left to be done.

Q. But in no instance did any man stop working because an electrician asked them to, isn't that correct? A. Oh, no. There were no electricians asking anybody not to work. It was simply a case that the electricians, by not working, made the other trades run out of work that they had to lay the other people off.

MR. ROTHFELD: I am finished.

MR. FISH: I have no redirect.

JUDGE PLAINE: You say no electricians asked people to stop. How do you know that?

THE WITNESS: Well -- no. I'm maybe assuming that, but I would say that that is a fact. Normally in a strike in New York City, the trade will go out on strike, and the other men will work as long as they can, and when they got to a point where they can't work any more because the electricians pipe isn't in, or some other reasons, then they have to start laying other people off and that's what happens

169 here. It takes maybe, after electricians leave the job, in most cases two to four weeks before it really starts hurting. And then you start getting the calls, when are they coming back, when are they coming back.

JUDGE PLAINE: If there's nothing further of this witness, we'll excuse him. Is that right?

MR. ROTHFELD: Nothing further.

JUDGE PLAINE: Thank you very much.

* * * * *

202 JUDGE PLAINE: On the record, gentlemen.

Mr. Fish?

MR. FISH: General Counsel rests, Your Honor.

JUDGE PLAINE: Mr. Rothfeld?

MR. ROTHFELD: I call Mr. Regan.

Whereupon,

JAMES FRANCIS REGAN

was called as a witness, and having been first duly sworn by Judge Plaine, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Rothfeld) Mr. Regan, what is your full name and address? A. James Francis Regan, 54 Sycamore Street, Staten Island, New York 10308.

Q. What is your position, sir? A. President of the Board of Education, City of New York.

Q. How long have you been president? A. Since July 1, 1974.

Q. And were you a member of the Board? A. Vice president from July 1, '73 to June 30, '74. A member of the board one year prior to that.

Q. Mr. Regan, you are here pursuant to subpoena, are you not? A. Correct.

203 Q. As the president of the Board of Education since July 1, 1974 did you have meetings during the months of July and August, 1974 at which Thomas Van Arsdale attended? A. One meeting that I recall.

Q. You met with Mr. Van Arsdale daily during the summer only once? A. That I recall.

Q. All right. When was that meeting? A. I forget the exact date. It was in the Deputy Mayor's office over in City Hall.

Q. That was Deputy Mayor Cavanaugh? A. That is correct.

MR. TURCHIN: I don't want to keep objecting but I think Mr. Rothfeld, as I understand it, should let the witness testify without leading.

JUDGE PLAINE: This is rather harmless.

MR. TURCHIN: I realize that. I have an objective, obviously.

JUDGE PLAINE: All right.

MR. ROTHFELD: I think the record will show that there is nothing I could do to change the identity of the deputy mayor or whether it is Cavanaugh or somebody else.

JUDGE PLAINE: Let us continue.

204 MR. TURCHIN: Judge, I would indicate again that if the record doesn't indicate the characterization that Mr. Rothfeld has made I would ask that that be stricken. It is unnecessary.

JUDGE PLAINE: I am not going to rule on these. We are wasting time, Mr. Turchin.

When we get to important matters we will avoid any leading of witnesses.

MR. TURCHIN: That is the purpose of my objection now.

JUDGE PLAINE: Very good.

Q. Who was present at this meeting besides Deputy Mayor Cavanaugh, Thomas Van Arsdale and yourself? A. There were some other individuals with Mr. Van Arsdale.

Mr. Joseph Monserrat, member of the board, of the Board of Education. I believe Dr. Amelia Ashe, member of the board.

I am trying to think if there was the chancellor, deputy chancellor at that meeting.

Q. Dr. Gifford? A. Dr. Gifford, the deputy chancellor, yes.

Q. Do you recall whether any other member of the board of education was present at that meeting? A. We had quite a

few meetings, not involving this, that were running concurrently.

205 I recall those three, including myself.

Q. Did you happen to take notes of that meeting?

A. No, I did not.

Q. Do you recall what Thomas Van Arsdale said at that meeting and you said at that meeting? A. Well, I don't recall the exact wording but I can give you what I perceive to be his statement or his statements; was to the effect that he was concerned about his workers and some of the problems that were going on in relation to Board of Education construction projects.

He mentioned some of the times that his Local 3 men had worked for Board of Education projects.

He indicated in some type of words to the effect of the downward trend in construction, that he would be certainly quite concerned about what would happen to his workers as far as their employment status.

He talked about a type of -- I don't want to use the word that he didn't use but I will use it, to my thinking it said some type of preferential list that could be established.

Q. Did he say preferential?

MR. TURCHIN: Objection, Your Honor.

A. I said he didn't say that.

MR. TURCHIN: If Your Honor please, I think the remark

206 of counsel is uncalled for. The witness should be allowed to testify. This is his witness and if he is going to --

JUDGE PLAINE: I see no harm in asking and having it clear on the record as to what the word was, if the witness knows.

THE WITNESS: I would like to state I did not say.

JUDGE PLAINE: I overrule the objection.

THE WITNESS: I did not say that he used the word preferential. I said he was interested in establishing some type of list so that his workers would be employed.

There was some dialogue by members of the board to the effect that, No. 1, we do not deal with unions, we go through the bidding process.

We award bids based on public bidding and we vote them publicly at public meetings and we do not deal with the unions.

Only the unions that we are directly responsible for such as the direct relationship to the United Federation of Teachers, Council of Supervisors Association, but in unions that deal with contractors that have won awards and that the contracts will have proven to be in line with the regulations of the Board of Education and various public laws, that we just deal with the contractors but we do not deal with the unions.

207 We also indicated that this could perhaps bind us legally for damages if we were to insist only on these particular workers on the awarded contracts that the board has voted.

JUDGE PLAINE: Was that a thought that you are liable for damages if you awarded contracts only?

THE WITNESS: We felt we would be probably in a position to be sued by contractors who said they are living up to Public Law 220 and paying prevailing rates, and that we have no right to not award them the contract.

They had affirmative action that they met all the qualifications for the bidding that we awarded the contract and voted publicly.

Another thought that sort of capped the meeting was the fact that, and I want to emphasize this because I think it is important as far as the board was concerned, that if the City of New York were

to come up with some citywide policy relative to any union situation or employing situation that the Board of Education was not liable to going along with that agreement, we would then sit as a body because we have a quasi-state status, and then we would sit and determine whether or not we want to go along with that.

We emphasize that we were not in a position that we would have to go along with something like this. We would take it under advisement, and we certainly would weigh the reasoning for the city making

208 such rule or agreement, whatever it might be, or citywide policy, et cetera.

JUDGE PLAINE: Is your board regarded as a state agency?

THE WITNESS: Yes.

MR. ROTHFELD: May I have this marked for identification, please.

(Document marked Respondent's Exhibit 1 for identification, of this date.)

Q. Mr. Regan, I show you this one-page document, Respondent's Exhibit 1 for identification and ask you whether this document with respect to a proposed layoff plan was delivered to your office?

Take your time. A. I don't recall this particular paper. I do recall there was sent to my office on a plain piece of paper without a heading some shorter statements in writing, typed, that referred to the situation at the time.

Q. Mr. Regan, did that piece of paper look like this piece of paper?

MR. TURCHIN: Is it being offered, Your Honor?

JUDGE PLAINE: It is marked R-1 for identification.

MR. TURCHIN: Can we examine it?

JUDGE PLAINE: I thought you had seen it.

MR. TURCHIN: No.

209 JUDGE PLAINE: Did you complete your answer?

THE WITNESS: I said this was -- I recall, as I said, and I will state it again, that there was a paper sent which was -- do you want that?

JUDGE PLAINE: Even shorter than that?

THE WITNESS: It was shorter, I recall, I don't recall this particular paper.

I do recall a piece of paper coming to my office and it had some statements on it that didn't seem to be as lucid as that.

Q. Did that piece of paper have as much white space on the bottom? A. More.

Q. More white space? A. Yes.

MR. ROTHFELD: Just a moment.

JUDGE PLAINE: Yes.

Q. Do you know where that piece of paper is, the one that was delivered to your office? A. No, I don't because, No. 1, it didn't have -- it had no heading on the paper. I don't recall where it is.

It was three or four simple declarative statements as I recall it up in the top of the page, about the size of that. It was much more white space.

Q. Mr. Regan, would you please read this and I ask you

210 whether you remember the language on this document as the same or substantially the same as the language on this piece of paper delivered to your office.

MR. BABISKIN: I will object to that.

The witness has testified he never saw that and he barely recollects what he remembers having seen. I don't think he is in a position to answer that question.

MR. ROTHFELD: I think he recollects.

JUDGE PLAINE: I don't know if he remembers what the text of the other one was. I don't know if anyone asked him that.

Do you remember the text of the other document, the one you believe you saw.

THE WITNESS: What I remember seeing, it was like four simple declarative statements, four or five, but it was very short.

It was not as long as this, if I recall correctly.

Now, again I have to say that one of the problems is the fact that we have no set heading on it or anything else so my office, you know, didn't exactly -- if I remember correctly did not come through the normal mail which would be logged in and given a number.

It dealt with the subject, there is no doubt about it but the sentences were very short.

211 There were four -- as I say, I think it was four simple declarative statements with much more space at the bottom.

JUDGE PLAINE: What do you mean by this subject?

THE WITNESS: The subject we are talking about here, work force skilled electricians, future jobs.

JUDGE PLAINE: I see.

Q. Mr. Regan, will you please read this document. A. I have.

MR. BABISKIN: Excuse me, I am going to object.

Mr. Rothfeld, are you trying to establish that this piece of paper was sent to someone in the city?

Is that what you are trying to elicit?

Maybe I can save you time and save Mr. Regan's time, all right.

What are you trying to elicit?

MR. ROTHFELD: Have you any knowledge, Mr. Babiskin, about who was in possession?

MR. TURCHIN: Objected to. Wait a moment. This man is not a witness. He is not sworn.

MR. BABISKIN: I was trying to save Mr. Regan's time.

He is a busy public official.

I'm trying to save Mr. Regan's time.

MR. TURCHIN: I think we are asking a simple question so we
212 can have an offer of proof as to what the purpose of this is and if we can expedite it I think we are entitled to know.

JUDGE PLAINE: At the present juncture Mr. Regan doesn't recall R-1 for identification as the paper he saw. That is where we are right now.

Now, what is the pending question?

Q. Mr. Regan, I ask you to read the test and compare it with the text on that other sheet of paper and then tell us how they compare.

MR. TURCHIN: Objection, Your Honor.

A. I would have to have the other sheet of paper.

MR. TURCHIN: Asked and answered.

JUDGE PLAINE: He apparently doesn't remember.

MR. ROTHFELD: Judge, I have gotten more statements from the other attorneys than I have from the witness on this.

JUDGE PLAINE: I am listening to you and the witness.

I think we are at a sort of impasse. The witness does not recall and isn't going to be able to help you apparently identify R-1 for identification as the document he received.

We are at that juncture, I'm sorry.

MR. ROTHFELD: Judge, the witness and I are not getting together because we are both getting a lot of interruptions.

213 JUDGE PLAINE: I'm sorry, that is the hazard of trial lawyers.

There are a lot of interruptions sometimes.

Let us keep going, keep going, you and I understand each other.

Q. Mr. Regan, I ask you to read this text to yourself.
A. I have read the text and I say again that I recall a shorter statement of four various statements that were at the top of the page.

Now, this is what I recall.

It did pertain to the material that is on this page.

Q. Did the import of the text which you received delivered to your office have the same import as the text which is in front of you on Respondent's Exhibit 1 for identification.

MR. TURCHIN: Objection.

JUDGE PLAINE: Objection overruled.

MR. TURCHIN: Your Honor, the import is not what we are concerned with.

In other words, the working of this man's mind is not what we are here for.

If this man is being put on as an expert witness for a particular purpose in the construction field I can understand why he can be asked an opinion.

214 But I don't believe we are dealing with opinions here, and if Your Honor is going to allow opinions to be stated by the witness, I would further indicate that what we are faced with is a situation where counsel for the respondent is impeaching the credibility of his own witness by this technique.

JUDGE PLAINE: He is asking about subject matter.

He is not asking anything else.

MR. TURCHIN: He is asking about the operation of this man's mind with reference to what was contained in two different documents and as to whether or not his opinion would be that the import of whatever that is supposed to mean is the same.

JUDGE PLAINE: The basic thrust of the question is the subject matter of the same.

A. I would say the subject matter was essentially synonymous to but I don't recall it being as explicit as this.

Again, I'm going to say what I recall seeing, the four declarative statements up at the top of the page.

Again, this is my memory in regard to a document that was not recorded in my office for the simple reason it came to my office on a plain sheet of paper and I don't think we allowed it in or anything else.

I saw it and I passed the information on.

215 Q. I hope you didn't put it in the round file, -- A. I certainly hope I didn't.

MR. TURCHIN: Objection.

MR. ROTHFELD: I offer it in evidence.

JUDGE PLAINE: I can't receive it on that basis.

This witness refuses to identify this as something he received.

He is very clear about it.

You may have someone else who can prove it but not by this witness.

MR. ROTHFELD: Your Honor, are you having it placed in the rejected exhibit file?

JUDGE PLAINE: If you want me to, unless you propose to use some other witness to try to identify and establish it.

MR. ROTHFELD: At this point I believe pursuant to the rules it should be placed in the rejected exhibit file.

JUDGE PLAINE: Shall I do.

R-1 for identification is rejected and has not been identified by the witness.

MR. TURCHIN: Are you finished?

When you said all right -- I'm sorry, are you finished with the witness?

MR. BABISKIN: Let me --

JUDGE PLAINE: Gentlemen, please call this to a halt.

Off the record.

216 (Discussion off the record.)

JUDGE PLAINE: On the record.

Q. Commissioner, is this the contract between Board of Education and Wickham?

MR. BABISKIN: Could we have that question read back?

(Whereupon the last question was read by the reporter)

MR. BABISKIN: I will object to the question.

I think it is absurd. What is the point?

JUDGE PLAINE: I don't see anything absurd about it.

He is identifying the contract.

Can you identify that?

A. I am not in a position to identify the contract.

I did not handle the contract. I voted, we voted contracts. We don't have these contracts come up in that setup to the board room.

I did not handle or see that particular document.

Q. Commissioner, do you know who would be in a position?

A. I would assume the office of school buildings, I would assume where they opened the buildings they certainly would see it.

I would say probably Dick Smith's office which works on the affirmative action would probably have gone over it, but I personally did not see that at any time.

MR. ROTHFELD: Mr. Babiskin, will you now stipulate this is a contract between Wickham and the Board of Education?

217 MR. BABISKIN: Of course.

JUDGE PLAINE: Do you want to mark it for identification?

MR. ROTHFELD: Yes, I would like to offer it in evidence.

MR. BABISKIN: Can we arrange to have a copy made?

JUDGE PLAINE: Based on a discussion we had yesterday, in view of the fact that it is a very bulky document and therefore the duplication of it and even the presence of it in the record is a little bit of an encumbrance, were you able to decide whether there were certain parts of it you were interested in so we can limit our duplication to that after establishing it comes from the contract?

MR. ROTHFELD: Yes.

JUDGE PLAINE: All right, that is fine, so that so far as the record is concerned we have the contract identified by stipulation and then you will ask for the excerpting of certain parts or paragraphs and the other side may do the same if they have anything they want in, all right?

MR. ROTHFELD: Of course.

JUDGE PLAINE: We have by stipulation R-2 which is the contract between the school board and who?

MR. ROTHFELD: Wickham.

218 MR. BABISKIN: Perhaps, Your Honor can please identify it by the school.

MR. ROTHFELD: Primary School 41.

MR. BABISKIN: Richmond.

MR. ROTHFELD: Richmond.

JUDGE PLAINE: Does it have a date, Mr. Rothfeld?

MR. TURCHIN: If we have a moment --

MR. ROTHFELD: April 8, 1974, and also dated April 15, 1974.

MR. TURCHIN: I think the record should indicate it is actually Wickham-Perone joint ventures contract with the Board of Education.

JUDGE PLAINE: Very good, thank you.

At the present stage of the proceeding the whole thing is in but it will be withdrawn.

MR. ROTHFELD: We will replace it for a facsimile.

JUDGE PLAINE: Substituting portions the parties think are of use to me.

MR. ROTHFELD: At least making reference to it, directing reference.

JUDGE PLAINE: All right, if it is simpler to put the whole thing in.

MR. ROTHFELD: Whatever, it will be worked out.

JUDGE PLAINE: Mr. Babiskin, since it is very possible counsel
219 may not have the time to -- hold it, sir -- is it possible we might have two copies?

MR. BABISKIN: He is going to get it, two copies.

JUDGE PLAINE: Very good.

Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

For the present the entire contract will be in and unless the parties by stipulation among themselves arrange for something different the entire contract will be in evidence and the parties will make reference to the portions they are interested in, in their briefs.

(Document received in evidence as Respondent's Exhibit 2, of this date)

Q. (By Mr. Rothfeld) Commissioner Regan, please take your time and think and tell us whether you have exhausted your recollection

of whatever Thomas Van Arsdale said at this meeting in the deputy mayor's office.

Take your time. A. There was a reference to the fact that this other local would be considered to be eligible for this list as well as his people.

MR. ROTHFELD: Thank you very much, Commissioner, your witness.

MR. FISH: No questions.

MR. BABISKIN: No questions.

JUDGE PLAINE: Do you have any?

220 MR. TURCHIN: Yes, I have some questions.

CROSS EXAMINATION

Q. (By Mr. Turchin) Didn't you ask Mr. Van Arsdale at this meeting why Local 3 electricians were working on other sites for the City of New York and State and not working for the Board of Education? A. Yes. This was brought up in a general conversation. I don't know who asked the question.

I don't know whether I asked it or somebody else but this I do recall, there was conversation with regard to why us because in fact I do recall more clearly now.

Dr. Ashe said to the effect that, you know, we are pressed with the opening of schools and we have some 24,000 students who will not be able to go into these schools, let alone inconvenience that will occur to the thousands of pupils in other schools that might be going on with modernization that could affect the schoolday of these other students.

But we had figures, I believe, of 23,000 some odd students that would be directly affected by not being able to move into the new buildings that were on the line to open.

Q. What did Mr. Van Arsdale say about this type of pressure being brought upon the Board of Education and the effect it would have
221 upon the children of the City of New York?

MR. ROTHFELD: Objection.

JUDGE PLAINE: The question is was anything of that kind discussed?

A. I said I know and I believe it was Dr. Ashe made the statement and the board, of course, concurred with the fact of how many students were being affected and that some of these schools -- we did have problems with what we call the balancing as far as our student body and some of these schools would relieve some of the problems that were occurring demographically in some of our schools.

Mr. Van Arsdale, if I recall correctly, reiterated the fact he had to be concerned about his workers and that this was what his problems were and I think he said something to the effect he saw the problems we were having but he also had his problems.

Q. Did he explain to you why he didn't have these problems in other city sites and other sites for the State of New York?

A. Not that I recall.

Q. But Mr. Van Arsdale was told about the significant problem with reference to time and the effect this was having on the Board of Education? A. Well, we --

222 MR. ROTHFELD: That is not a question.

I object.

JUDGE PLAINE: I think it is a question.

A. We emphasized the fact that we were in a situation where we had so many contracts out and we were losing programming time.

The schools were scheduled to open in September, first week in September.

Parents groups and other groups were very concerned about the safety of the kids and not just the eduction.

A lot of these schools are sometimes built with the idea, of course, one of the main problems we face is transportation with our students.

We emphasized it was not just -- I want to emphasize this, it was not just the 23,000 on the new schools but we did say we had a lot of inconvenience in other schools where modernizations were going on.

We certainly did feel that why us, but --

Q. Did anyone tell Mr. Van Arsdale that the employer had a restraining order from the federal courts of the Board of Education could not replace them as it had to do prior to the obtaining of the restraining order?

MR. ROTHFELD: Objection, improper question.

MR. BABISKIN: There are quite a few unstated assumptions in that question.

223 JUDGE PLAINE: The witness strikes me as a very intelligent person who can understand whether these matters were said or not.

He can say.

MR. ROTHFELD: The question assumes to be true certain things not in evidence.

That is an improper question.

MR. TURCHIN: Mr. Rothfeld, there was a restraining order in evidence.

MR. ROTHFELD: That is in evidence, yes.

MR. TURCHIN: That is what I am referring to, Mr. Rothfeld.

MR. ROTHFELD: There are other things not in evidence that are part of your question.

MR. TURCHIN: Will Mr. Rothbell indicate to me what he wants to put into evidence so I can make the statement a factual and fair statement?

JUDGE PLAINE: I'm inclined to think your question is a fair question.

If the witness thinks it is he will tell me so.

Read it back so the witness hears it again.

(Whereupon the pending question was read by the reporter.)

MR. BABISKIN: I will object, Your Honor.

There has been no testimony that the Board of Education
224 tried to replace anybody.

MR. TURCHIN: There is in evidence, Your Honor, a letter from the Board of Education to the employer asking the employer to leave the work site and that -- let me finish --

MR. BABISKIN: That is correct, but there is no testimony --

MR. TURCHIN: Let me finish, please.

MR. BABISKIN: There is no testimony on this record --

JUDGE PLAINE: Mr. Babiskin, will you please not interrupt someone who is trying to make a statement?

MR. BABISKIN: I'm sorry, Your Honor.

MR. TURCHIN: The letter was sent prior to the obtaining of the restraining order.

The restraining order was obtained from the Federal Court and thereafter another letter was sent from the board rescinding the prior stoporder letter.

MR. BABISKIN: That is correct, Your Honor, but there has been no testimony on this record by any witness that Board of Education replaced anybody and that is what the question is.

MR. ROTHFELD: Or attempted to replace anybody, Judge.

MR. BABISKIN: There is no testimony about that either.

MR. TURCHIN: Your Honor, this is cross. I believe I have some latitude.

225 MR. BABISKIN: But you must confine yourself to the evidence.

JUDGE PLAINE: I have overruled that objection. Repeat the question once more and let the witness answer.

(Whereupon the last question was read by the reporter)

A. It would be difficult for me to pinpoint that at that particular meeting for the simple reason that the letters and everything else that went on about this was discussed quite frequently in the board room in relation to where we were at, and the time frame in getting the schools opened.

I think there would be other people present who probably would be able to answer that more thoroughly than myself.

Q. Wasn't the issue of the restraining order brought up at all during this meeting? A. I have difficulty recalling it. That is all I can say.

Q. You were aware of the fact that a restraining order had been obtained? A. That part I was aware.

Q. Against the Board of Education. A. Aware of letters and everything else that was sent, a restraining order involved but at that particular meeting I don't recall all of that being mentioned,

226 although it is quite possible that it was because there was quite a bit mentioned as I said.

There wasn't just myself and the board, there were two other members that I recall at least at that meeting.

I could not -- just was not in my recollection to recall that.

Perhaps it was not my forte and I didn't grab hold of it.

Q. Were there any attorneys present from the comptroller's office? A. Yes.

Q. Who? A. From the --

Q. Comptroller's. A. From the corporation counsel.

Q. The corporation counsel or the board of education?

A. The corporation counsel, Mr. Buxbaum was there.

Q. Did Mr. Buxbaum indicate to Mr. Van Arsdale that he was the attorney who handled this matter for the corporation counsel in the federal court? A. I don't necessarily recall that statement.

Q. Do you know that Mr. Buxbaum was the attorney who handled this matter for the Board of Education in the federal court?

A. Did I know?

227 Q. Yes. A. Not particularly, no.

JUDGE PLAINE: Mr. Turchin, Mr. Buxbaum was the assistant corporation counsel.

MR. ROTHFELD: First deputy.

MR. TURCHIN: First deputy assistant corporation counsel who handled that matter for the corporation counsel.

JUDGE PLAINE: I heard the name before and I had forgotten in what context.

Q. Do you recall what Mr. Buxbaum said to Mr. Van Arsdale, if anything? A. I think what I recall, the conclusions as to conversations of Mr. Buxbaum, both from him, people in the room was he could not with any legal certainty state that what was being discussed and what was a possibility even if the city were to agree to certain things, whether it would be legal or not.

That is what I recall Mr. Buxbaum --

Q. Did Mr. Buxbaum discuss in Mr. Van Arsdale's presence and in your presence anything concerning the restraining order and

the background to it? A. The restraining order, quite honestly I wasn't -- if it was discussed I did not grab ahold of it.

Q. But --

MR. BABISKIN: Excuse me, Your Honor, the witness has
228 stated over and over again his recollection. I think Mr. Turchin has exhausted this.

JUDGE PLAINE: We may be close to it but there may be one more question that might do it.

Do you remember your question?

A. But you did recall that Mr. Buxbaum had mentioned that legal steps had been taken and that there might be some restraint on the board of education in its activities and its actions with reference to the requests of Mr. Van Arsdale or the threats of Mr. Van Arsdale?

MR. ROTHFELD: Objection, there is no testimony about threats.

There was no testimony about threats either today or yesterday.

There is no testimony in this entire record.

JUDGE PLAINE: I heard you, you repeated what you said. Now please.

I say to you, Counselor, there is no evidence from this witness that there were any threats.

Why don't you rephrase your question.

MR. TURCHIN: Read the question and leave out the last two words.

(Whereupon the last question with the requested deletion read by the reporter.)

229 A. I don't recall. Again I stated in regard to that restraining order and I say to you it doesn't mean it wasn't discussed but it was not my recollection to grab hold of that.

I was thinking of other things at the time and I was trying to pay attention to many people in the room who had cross discussion.

Q. So you couldn't testify whether or not Mr. Buxbaum -- A. Correct.

Q. (Continuing) -- had made the statements to Mr. Van Arsdale and to the board of education? A. As I said to you, I don't recall that portion of the conversation in the office.

MR. TURCHIN: I have no further questions.

JUDGE PLAINE: Is there some redirect?

MR. ROTHFELD: Yes.

REDIRECT EXAMINATION

Q. (By Mr. Rothfeld) Commissioner, did you recall whether Mr. Buxbaum stated he and his office were working on the devising of a layoff plan pursuant to Mr. Van Arsdale's prior request of him to do so? A. What I recall with Mr. Buxbaum was that the discussion in regard to whatever plan would possibly come out, if anything did come out, there was the question of legality and there was a question -- Mr. Buxbaum did not seem to have the definitive answer whether or not
230 it would be legal or illegal, but he did discuss the fact that there was a question of legality.

Q. Commissioner -- A. And he did not have a definitive answer at that time. We asked him.

Q. Do you recall whether Mr. Buxbaum said that he and his office were working on devising such layoff plan? A. He said they had been doing some research in regard to the entire question.

Q. And did he say -- A. At that point he said he could not give an answer.

He was asked by I think a couple of parties.

Q. Did Mr. Buxbaum say that he had several people in his office working on such plan? A. That I don't recall.

Q. Do you recall whether Mr. Buxbaum acknowledged that Mr. Van Arsdale had asked him to work on such a plan?
A. Don't recall that.

Q. Do you recall any conversation at all between Mr. Van Arsdale and Mr. Buxbaum at that meeting? A. Mr. Buxbaum was sitting there and he was being asked by all groups in regard to the legality question.

I think this was -- everybody was quite concerned about that.

231 If there was any possibility that anything like this would even be legal, and he didn't even have the answer at that time.

I think everyone was a little chagrined but that is the legal business.

MR. ROTHFELD: Thank you, Commissioner.

RECROSS EXAMINATION

Q. (By Mr. Turchin) So that the import of the meeting seemed to be, and will you tell me, if I am correct. That if the board could have found a way to have preferred Local 3 and restricted the work only to Local 3 then the board would have been satisfied and go along with that procedure.

MR. ROTHFELD: Objection, there is not one item of testimony that there was any request by Mr. Van Arsdale or anybody else to provide any preferential status on the plan for Local 3 or exclusivity for Local 3.

In fact all the testimony of this witness and of yesterday is quite the reverse, that this layoff plan was to be a rotating plan.

MR. TURCHIN: Let me repeat what my notes say that Mr. Regan testified.

He stated that Mr. Van Arsdale was concerned with the downward trend in construction, was concerned about the employment status of workers of Local 3 and in the mind of the witness
232 he wanted a preferential list so that Local 3 workers would be employed.

Q. Is that correct?

THE WITNESS: Can I object a little bit?

JUDGE PLAINE: My recollection is a little bit more than that. That when the witness talked of what was said about the plan he indicated there was some reference that the other union local would be eligible for that so that would indicate that at least one other party other than Local 3 would be or at least was in Mr. Van Arsdale's statement, as far as this witness got it, would not be exclusive of Local 3.

MR. TURCHIN: Let me give you my point so possibly you will understand where I am going with the question.

Where Local 3 is the only union doing work and is now being replaced by another union then the eligibility list would only consist of Local 3 employees.

Therefore, of course, Local 3 would not be concerned under those conditions since no other union would be involved and Local 3 under those conditions, would be glad to let anybody come in since there would be only one eligibility list.

MR. ROTHFELD: Objection, Your Honor.

233 There has been no testimony on direct or that Local 3 is the only union doing the work.

The testimony is the contrary. Local 3 is doing the great majority of the work but not all.

Q. How much would you say is being done by Local 3 as compared to other unions? A. I don't have the factual data. I would say probably the vast majority of it.

Q. Would you say 95 percent? A. Don't ask me percentage. I would have to go and look at it. It is very high, no doubt about it.

JUDGE PLAINE: Mr. Turchin, really what you are suggesting is an argument that you would make in a brief, that the gentleman, making such a proposal, other unions could benefit, had his tongue in cheek.

He really didn't have any true meaning because of the figures.

There are figures in the case indicating and I think the witness yesterday, the board of education witness indicated the ball park figures were like 98 percent were being done by Local 3.

MR. TURCHIN: I think you know what I am pointing out, the intent, not the statement.

This is what the board has ruled.

JUDGE PLAINE: The only question that could be proper at this
234 time is whether anybody raised that point and that is the only question.

Q. Did anybody raise that point? A. What point?

JUDGE PLAINE: That only Local 3 would be the beneficiary of the plan.

MR. ROTHFELD: Objection, there was no such point.

JUDGE PLAINE: The witness is being asked on cross examination whether anybody suggested that only Local 3 might be the beneficiary of such a plan.

THE WITNESS: As I recall there was discussion about what would happen to members of the other union who were in a similar situation.

It appeared from the conversation that Mr. Van Arsdale, they would be also listed according to layoff.

JUDGE PLAINE: So there was no such discussion beyond this as far as you remember?

THE WITNESS: No. The only thing I do want to say is, again, that the board members at no time indicated they would automatically agree to anything the city agreed to, that they had the perfect right and they would insist on that right of going back and discussing in the light of their responsibilities to decide whether or not to go along with a citywide agreement if that was legal, and if it even came about.

The point was made many times by members of the board
235 that they would certainly take it into consideration but we are not bound by any resolution of the city.

MR. TURCHIN: I have no further questions.

MR. FISH: Nothing further.

JUDGE PLAINE: Mr. Babiskin?

MR. BABISKIN: Nothing further.

MR. ROTHFELD: Nothing further.

JUDGE PLAINE: Thank you very much, Mr. Regan, you are excused.

(Witness excused.)

JUDGE PLAINE: On the record.

Whereupon,

JOSEPH MONSERRAT

was called as a witness and, having been first duly sworn by Judge Plaine, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Rothfeld) Commissioner, what is your present position? A. I'm a member of the New York City Board of Education.

JUDGE PLAINE: I didn't get your name.

THE WITNESS: Joseph Monserrat.

Q. How long have you been such a member? A. Since May of 1969.

Q. Sir, during the months of July and August, 1974 did you
236 attend any meetings at which Thomas Van Arsdale was present?
A. Yes, I did.

Q. About how many? A. At least one.

Q. Could you try to recall whether it was more than one?
A. You are talking about formal meetings?

Q. No, formal or informal. A. Possibly three.

Q. Did you happen to take notes of any of these meetings?
A. No, I did not.

Q. Would you please tell us first what was said at these meetings by Mr. Van Arsdale to you with respect to --

MR. FISH: Do you have a date on these meetings?

MR. ROTHFELD: All right, sir.

Q. Do you happen to recollect the dates of these three meetings?
A. No. One was a meeting, a meeting at the mayor's office. After the meeting at the mayor's office I bumped into Mr. Van Arsdale again.

That is why I asked you if this is a formal or informal meeting.

I think I ran into him once before this particular day.

There's been only formal meeting.

JUDGE PLAINE: Before the meeting at the mayor's office.

237 Q. About how long before the meeting in the mayor's office?
A. I don't remember, just an informal bumping into people.

Q. Could it have been in the month of July or aren't you sure? A. No, I'm not sure.

Q. After these meetings do you recall if Mr. Van Arsdale said to you other than pleasantries? A. Well, the discussion centered around the issue of the time and the issue of the time was the fact that Local 3 workers were on strike and were stopping school constructions before the beginning of school which was going to have a negative effect on the opening of schools.

The discussion was held and a conference meeting was held in the mayor's office where this was the issue.

I don't know that Mr. Van Arsdale spoke directly to me any more than I might have spoken directly to him. We were speaking at a meeting in general although we may have addressed each other specifically, but it was to the general meeting that we were discussing.

Q. I'm sorry, could you please try to exhaust your recollection as to what Mr. Van Arsdale said at any meeting with you? Take your time, please. A. If you want a verbatim recollection, I'm sorry.

238 I remember the general topic of the theme and the general indication, the problem dealt with how we were to get Local 3 workers back to work before school opened in one instance.

There were discussions, mention was made of the fact that Mr. McLaren of our staff had taken action which our board did not know about which seemed to be done for the benefit of encouraging Local 3 to return to work by stopping two or three other people from working whose workers were not members of Local 3.

There was discussion of the general problem of seniority, hiring, et cetera.

One of my functions at the board of education is that I'm the president of the negotiating committee of the board of education and

negotiating with the 31 some odd locals the board of education has contracts with.

One of the problems discussed in relation to this hiring list is the effect upon our negotiations with all of the other groups, and my concern was very clear as was those of my colleagues, that what the city did in this instance was not something that in any way could be accepted by us automatically because its effect upon all of our other groups.

This was part of a discussion in general that I had with Mr. Van Arsale in our informal discussion.

239 Just simply indicated to him that look, this is not something we can simply say yes to.

There is too much involved here.

There are too many ramifications. There are too many other groups involved.

We have negotiated in our contract different ways of dealing with seniority problems, with hiring, with firing, with the old question of retentions, the whole question of bumping.

It is a very complicated issue for us in the board.

In addition to the fact that under the decentralized school system this just could not be done and would not be done simply by the central board.

We have a new negotiating method.

There is a whole new procedure in dealing with unions now since the decentralization procedure which involves an advisory committee.

The law requires that we on the board of education consult with the local school boards on matters that affect them.

We have interpreted that consultation to mean that they could become part of the negotiating team.

Q. Excuse me, Commissioner -- A. All of this is involved.

240 Q. I don't wish to interrupt you but you haven't answered my question.

MR. TURCHIN: Objection.

A. I thought I did. I was telling Mr. Van Arsdale some of it in a private meeting with him.

MR. ROTHFELD: Judge, my question wasn't what he said to Mr. Van Arsdale.

My question was and is again, Commissioner, would you exhaust your recollection as to what Mr. Van Arsdale said to you?

MR. BABISKIN: Excuse me, Your Honor, I see a trend developing in the questions.

We ask very busy public officials what their recollection is and what Mr. Van Arsdale said to them and I believe they have been trying to the best of their ability to do so.

I respectfully submit if we are trying to get what Mr. Van Arsdale said bring Mr. Van Arsdale in.

JUDGE PLAINE: I guess I would be inclined to agree.

MR. BABISKIN: This is a back door way.

JUDGE PLAINE: This is still proper examination of this witness.

But on the other hand the witness is to try and describe, as I see it, a flow of conversation without attempting to do it verbatim and trying to recollect how he dealt with matters that Van Arsdale raised with him.

241 MR. ROTHFELD: Judge, I'm not trying to interrupt, to interfere with any response by the witness.

But I didn't hear a flow of conversation.

To me it seemed all of what was said to Mr. Van Arsdale. My question was what was said by Mr. Van Arsdale and Commissioner, would you please address yourself to that.

A. (Continuing) In a roomful of people Mr. Van Arsdale was discussing and explaining a plan, a suggestion, a method of dealing with the problem and the problem had to do with the employment and curtailment of employment in the building industry which affected negatively or could affect negatively members of his union.

He was indicating and outlining a method whereby he believed his members, people to whom he is responsible would suffer less.

He didn't use those words but that is the concept that was coming across.

JUDGE PLAINE: This was in the formal meeting?

THE WITNESS: In the formal meeting.

A discussion around -- we asked -- there was a flow of conversation back and forth.

There were some specific questions asked of Mr. Van Arsdale, whether this would be done, what, how it would affect Local 363 which is the other local.

242 Questions were asked and discussions held about whether this could be legally done.

I believe Mr. Van Arsdale seemed to assume that it could be done.

There were some questions asked of some of the lawyers who were present. I can't give you verbatim what he said but these were the topics to which he was addressing himself and to which we were responding.

Q. Commissioner, I show you Respondent's Exhibit 1, rejected, and ask you to read it, first to yourself.

Now, sir, did Mr. Van Arsdale discuss at this meeting concerning which you are talking about the substance of what is on Respondent's Exhibit 1, rejected. A. Yes, I think that was part of the conversation as to, you know, what you mean by substance but obviously a layoff plan and the matter of rehiring people which is what this is about, was the discussion.

Q. Sir, you are something of an expert on labor relations.

Would that be a fair statement? A. I have had some experience.

Q. For a number of years? A. Some.

Q. Involving a number of unions? A. Yes.

243 Q. Is it your understanding, that the thrust of Mr. Van Arsdale's suggested plan to be put in words by the corporation counsel Buxbaum was that when any electrician finished working on a school job he would then be placed on a layoff list and from that layoff list any new contractor who bid would be given those names in rotation, whether the person was a member of Local 3 or not, a member of Local 3 --

MR. BABISKIN: Your Honor, I want to object to the question and I also want to note there has been no testimony at all that Mr. Buxbaum was putting anything in writing.

There has been no testimony of that at all.

MR. FISH: I also would like to object on the grounds it is clearly a leading question.

MR. TURCHIN: I would like to know whether or not it is the position of counsel for respondent that the purpose of the thrust of Mr. Van Arsdale's position, and this is what I assumed respondent's position was, that they want a layoff list of employees who would be required to be hired by contractors who worked for the board of education.

If that is their position I would like to have it on the record.

MR. ROTHFELD: Mr. Turchin, you were away most of yesterday and there was a record which you will have a chance

244 to read.

MR. TURCHIN: What I also request is that you ask counsel not to yell at me.

MR. ROTHFELD: Let the record show I didn't yell.

JUDGE PLAINE: Let us finish this discussion.

Are you essentially asking, Mr. Rothfeld, Mr. Monserrat's understanding of the layoff plan that was submitted at this meeting?

MR. ROTHFELD: That is right, Your Honor.

JUDGE PLAINE: Let us ask that question.

Do you understand what was this layoff plan that was being submitted at this meeting in the mayor's office?

THE WITNESS: Not completely, no, because there were some areas that were gray, but in general terms, yes.

The general terms were that this was supposed to be a method establishing a list which would provide a system of rehiring according to some time table of layoffs, et cetera.

Discussions were entered into by whether or not this would only be for District 3.

MR. ROTHFELD: Local 3.

THE WITNESS: Local 3, I'm sorry.

The statements were made, no, 363 people would also be involed, and I must say that we did not go beyond just saying that

245 because there were some questions and some problems that I had dealing with that which I wanted to discuss, but reality was the question was asked whether this was legal or not and we never got to those discussions.

Q. Sir, was my description of what Mr. Van Arsdale suggested what you in fact heard substantially?

MR. BABISKIN: I object.

JUDGE PLAINE: I really don't think we can put it that way, Counselor.

We have asked the witness his recollection of what he thought was being suggested. He has given it to us.

Now I don't think we can put it in any more precise terms.

Q. Was it your understanding of that proposal by Mr. Van Arsdale that as a man was laid off after completing a job he would be placed on a list and that list would be submitted.

The names on that list would be submitted in rotation regardless of union affiliation, to contractors who bid.

MR. TURCHIN: Objection, Your Honor, unless Your Honor will allow us the same discretion with reference to the type of question being asked on cross examination.

JUDGE PLAINE: I'm not going to make any deals with anybody.

246 If this is a proper question I will allow it.

What is improper?

MR. TURCHIN: Improper in that it is leading. Further improper, impeaching the credibility of his own witness.

The witness testified and he was trying not only to impeach the credibility but he is suggesting to the witness and further this is the third or fourth time he has asked the same question.

JUDGE PLAINE: I won't allow it too much further but I think it is proper to ask that.

Do you remember the question?

Do you have a recollection of the answer.

THE WITNESS: I would like to hear the question again because there have been three different nuances and I want to make sure what nuance I am responding to now.

JUDGE PLAINE: Mr. Mandel?

(Whereupon the last question was read by the reporter.)

A. There was a discussion of a plan which would involve the rotation system which would involve seniority of firing and hiring.

Exactly the method of implementation, the inference of submission that I don't recall coming into it because we did not know what the instrumentality was.

247 But in essence the concept of the plan, of a list, of hiring and seniority, et cetera, was the essence of the conversation.

Q. Sir, when you use the word seniority do you mean that the date of the layoff would determine the date of the hire? A. That was the implication, yes.

Q. Commissioner, I show you on Respondent's Exhibit 2 in evidence a page numbered 3.

I must note there are many pages numbered Page 3 in this document.

MR. FISH: What is the title?

What is the title so we can identify it better?

JUDGE PLAINE: Is there an appendix of some sort?

MR. ROTHFELD: Page 1 is entitled New Article 60A to Contract Form BM29 and BC29.

Q. I ask you to read to yourself that paragraph.

No, let us read it out loud.

"Fifth: That said bidder is not in arrears to the City of New York upon debt or contract and is not in arrears to the City of New York upon debt or contract."

It says that twice, "And is not a defaulter of surety or otherwise upon any obligation to the City of New York and has not been declared not responsible or disqualified by any agency of the City

248 of New York, State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the bidder to receive public contracts except non-bidder, will insert 'non' ".

JUDGE PLAINE: What is the preface to that? There must be a preface.

MR. ROTHFELD: There is an item Fifth.

JUDGE PLAINE: What is the preface?

MR. ROTHFELD: The preface is he said it declares, affirms and certifies. Thank you, Judge.

* * * * *

253 Q. Are you aware of the fact that at this time there was a ruling by the New York State Apprenticeship Council with respect to the decertification and deregistration of the apprentice program of which Wickham Electric Company is a part and participant in? A. No, not until it was raised in a board meeting.

Q. Which board meeting? A. The last board meeting on Wednesday the 19th.

Q. Will you tell us what was raised with respect to that?

MR. TURCHIN: Objection, not material or relevant.

It has no issue whatsoever with reference to what took place with proceedings --

254 JUDGE PLAINE: I understand this was a meeting at which there was some testimony yesterday that was allowed.

Based on questions by the general counsel and after a good deal of bickering we let it in, so I think counsel is within his rights in inquiring further. So I will overrule the objection.

MR. TURCHIN: I think though the import of my objection is that this is witness of respondent, this is cross examination.

There might be some area that they can go into but I am indicating the question of the area is not material or relevant.

JUDGE PLAINE: There was an argument made yesterday which if I recall it correctly, was to the effect that what transpired at this meeting would shed some light on previous contracts which were within the framework of the complaint.

Now, general counsel prevailed in that argument.

There was testimony and I can't remember the extent of it but I think counsel for the respondent is within his rights in asking this question.

Now, can you repeat the question again?

(Whereupon the last question was read by the reporter.)

JUDGE PLAINE: You have an exception.

255 MR. TURCHIN: I have an automatic exception?

JUDGE PLAINE: Absolutely, under our rules you have an exception any time you are overruled. You have an automatic exception.

MR. TURCHIN: Thank you.

A. I assume that is the dequalification or disqualification in relation to the apprentice program? Is that what that is?

I realize I should be able to say yes or no. There is no way in which I can say yes or no.

JUDGE PLAINE: Do the best you can.

A. No. 1, I was chairing that meeting. As such, being in the chair a number of issues were raised which I had to deal with in order to "rule".

The issue was raised over the fact that there was before the board of education a contract which included a segment of an award to Wickham and Perone I think.

Present at the meeting were members, I assume or certainly representatives of Local 3 who raised an objection to our granting this particular contract.

One of the grounds which was raised for not granting this contract was the reference to an apprenticeship program.

We were asked did we know there had been a disqualification in relation to the apprenticeship program.

256 In response to your question that is how much I knew about the disqualification and that is how I got to know about it.

Q. Was it called to your attention, sir, that effective June 17, 1974 the New York State Apprenticeship Council, an official agency of the State of New York had deregistered the apprentice program of which Wickham was a part?

MR. TURCHIN: Objection, Your Honor.

Q. (Continuing) And that disqualification is now being appealed by Mr. Turchin standing here.

MR. TURCHIN: Of course the only problem is that what was just stated is absolutely untrue.

MR. ROTHFELD: Do you want to take the stand, Mr. Turchin, after Mr. Monserrat sits down?

MR. TURCHIN: Do you want to call me?

JUDGE PLAINE: If it is untrue and if the witness knows anything about this he will so state.

MR. TURCHIN: I am indicating, sir, the statement by Mr. Rothfeld concerning the statement about me is untrue. That is the only problem.

Mr. Rothfeld brings this down to a personal level, sir and I think I should have an opportunity, since he does say that --

257 JUDGE PLAINE: Your objection is confusing me with all these personals. Keep the personality out of this case.

MR. TURCHIN: I would hope we should go to the issue.

JUDGE PLAINE: You are making mincemeat out of some of these objections.

MR. ROTHFELD: Mr. Turchin, will you now stipulate for the record the fact that June 17, 1974 the New York State Apprenticeship Council decertified and deregistered the apprenticeship program of which Wickham Electric is a party and which is necessary with respect to the hiring of apprentices for New York City jobs.

MR. TURCHIN: Not only will I not so state but I indicate to this board that is not so. No such decertification or deregistration took place on that date or any date that Mr. Rothfeld is referring to, and my objection again is there is no proof in the record and that question presupposes the fact that is not in the record and I object to that question.

Q. Commissioner Monserrat, was it called to your attention that Howard Babitch of the New York City Comptroller's Office was in the process of investigating the complaints by employees of Wickham Electric Company now on strike that they had not been paid the prevailing rate of wages by Wickham, the prevailing rate

258 required by Section 220 of the Labor Laws of the State of New York which is made part of this contract?

It is set forth as New Article 63 to contract form RM29 and RC29 starting on Page 1, "The contractor must strictly comply with all applicable provisions of the New York State Labor Laws including amendments thereto and the provisions of Section 343-9.0 of the New York City Administrative Code as amended," then

continuing for three pages with reference to the prevailing wage rate law.

MR. TURCHIN: Objection.

JUDGE PLAINE: Hold it.

MR. BABISKIN: Your Honor, I think the approach Mr. Rothfeld is adopting, I make the suggestion why not ask Mr. Monserrat what happened and maybe it would be a lot quicker and move these proceedings along.

Mr. Monserrat was there and I am sure he is quite capable of telling the board what happened at that meeting.

JUDGE PLAINE: I will hear you too, Mr. Turchin.

MR. TURCHIN: The contract was signed on a certain date, sir.

The issue is not whether any time subsequent thereto or any time within the memory of any witness there were conversations
259 concerning violations of that particular rule.

The only thing that might be relevant, and I question whether even that is relevant, whether the date that contract was signed such a violation existed and there was no proof that such a violation existed.

The question is so broad as to be objectionable.

JUDGE PLAINE: I find it very hard to deal with this as a question.

It sounds to me like a legal argument to the witness.

But what I think you will have to do is to start over and if you want to pursue this and number one, this witness has now testified that in discussion at the October 19th meeting Local 3 objected to the grant of the contract to Wickham, et al.

That one ground was something about the apprenticeship program.

Now, my suggestion to you is that you ask him if he knows what the ground was, if it was made.

I think that is as far as you can go at this point.

MR. ROTHFELD: Judge, again I am at a loss.

There is a question on the record. Is it your ruling that the question is improper?

JUDGE PLAINE: Your question is so involved that I doubt it is proper at all.

260 I think you have got to reframe the question even if you have the proper intention in mind.

It really is a question beyond containment.

Q. Is it correct that Local Union 3 asked that the award to Wickham be deferred pending findings on investigations by city officials regarding prevailing rate of wage violations by Wickham?

A. May I break your question down into two parts?

Q. Of course. A. Because there is a problem with the question.

Number one, yes.

The union did ask for a deferment about approving the contract.

But as to number two in relation to the fact there was an investigation going on, et cetera, there were allegations made to us about a third party who is not present.

I indicated then we simply could not take action on that kind of ground because we wouldn't do it for anybody. We are not a court of law.

We weren't hearing testimony.

I raised the question why this had not been raised with us before.

There was a procedure and if you want I will answer you about this because it is part of the procedure.

261 Q. Please do. A. When these contracts reach the board of education they have gone through a process and it includes a number of people who are responsible for seeing to it that the various policies of these contracts are in fact adhered to.

When the board sits and meets and questions arise we have present there those people who can supply us with specific knowledge on specific issues, including our attorneys, our compliance officers from school buildings.

When the issue was raised a number of items were brought the board's attention including the fact we seemed to be enjoined from acting against Mr. Wickham's company, if there is such a thing as Mr. Wickham, but Wickham and Company that we simply as I recall the meeting, charges made by some of the men who -- I don't know whether they belong to Local 3 but they did indicate they had made some kickbacks and they were testifying to this effect.

All these things took place.

However, the fact they took place at the board was not something that was as far as we were concerned a proper place for it because we are not that kind of body.

We even went so far as to recess the meeting and hold an
262 executive session of the board at my request with our attorneys, with everybody concerned to make a determination as to whether or not we could fulfill the request of the union or whether we had an obligation to.

It was pointed out to us that these had been dealt with and then we indicated we would approve it and we did with certain conditions.

They were that if it should be approved and some of the allegations made were proven we had a responsibility, an obligation to reconsider that contract. That was the tone and general reality of that meeting.

That was the reference that was made to the apprenticeship program, the references that were made to other allegedly illegal activities.

What I am saying is that we on the board could not function on hearsay evidence without any kind of due process simply because we are being told by some people that some allegations had been made.

We are not the body. So far as the prevailing wages and other factors are concerned it is the comptroller's office of New York who makes that determination for us as a board.

We assume when we sign one of these contracts and our
263 people have told us these obligations have been met, the wages in fact were met.

If we know they are not being met we certainly would not approve such a thing but I repeat, it is not our responsibility under the procedure.

It is the comptroller's office that does that.

Q. Can I interrupt you, sir? A. Surely.

Q. Did you investigate to determine the status of the matters before the comptroller of the City of New York with respect to these employees of Wickham?

And their charges at the time you made your decision.

MR. TURCHIN: Objection.

JUDGE PLAINE: What is wrong with the question?

MR. TURCHIN: Nothing wrong with the question. I think the objection goes to the fact that it is immaterial to this particular proceeding as to whether or not he checked with the particular boards to verify hearsay statements and to see whether hearsay statements had a basis in fact.

The question is at the time it was told to Local 3 at the October 19 meeting had he made an investigation of these matters.

Probably the answer is no because from what he has been telling us this is all been hearsay as far as they were concerned.

264 MR. ROTHFELD: Judge, there is a lot of hearsay talk in the last few minutes.

The witness did testify --

JUDGE PLAINE: It was the witness' words, not mine.

Q. Let us get this hearsay straight.

Did employees of Wickham take the stand and say they personally were compelled to pay kickbacks on New York State jobs?

MR. TURCHIN: Objection.

MR. BABISKIN: Objection, there is no stand.

It is a public calendar meeting of the board of education.

The people appeared apparently --

MR. ROTHFELD: May I be permitted to finish my question before there is an objection?

JUDGE PLAINE: Go ahead.

Q. Commissioner --

JUDGE PLAINE: May I make a suggestion?

Can you not confine your questions to a single topic rather than and, and, and? I think it is very involved trying to follow it.

Q. Did employees of Wickham take the stand at that meeting and say they personally were compelled to pay kickbacks on New York State cost plus jobs?

MR. TURCHIN: Objection as to what took place at that

265 meeting with reference to employees or alleged employees of Wickham is not material or relevant.

JUDGE PLAINE: Well, we have now had testimony as to what was said.

There was talk of kickbacks the witness said.

He is being asked more specifically did anyone there say that he or she had been the one involved in the kickback matter.

MR. TURCHIN: Well, here is a kickback statute that I recognize under the federal statutes. I am wondering what we are doing here.

JUDGE PLAINE: I think you are really nitpicking at this point.

Did anyone specifically say he or she was the victim of a kickback.

THE WITNESS: To my recollection two or three men who were present indicated they had made statements to the effect they had made kickbacks.

Whether it was government jobs or others I don't know, just that they had in effect made kickbacks.

That statement was made to us from the lectern of our public meeting.

Q. Were there statements, not hearsay, made by employees of Wickham who said they personally had not been paid the prevailing rate of wage by Wickham?

266 MR. TURCHIN: Objection, not material or relevant, and we are going again far afield.

JUDGE PLAINE: No, I will allow it.

MR. TURCHIN: It is a fishing expedition having nothing to do with this hearing.

JUDGE PLAINE: I will allow it.

MR. BABISKIN: Excuse me, Your Honor, I just want to object slightly to the form of the question raised by Mr. Rothfeld.

In other words, any statement made at that meeting by anybody is technically hearsay here and so the way the question was phrased by Mr. Rothfeld he said were there any statements, not hearsay, raised.

I think the proper form of the question should be to which I would have no objection, is were there any statements made concerning, and let the witness answer it, but I object to the qualifying not hearsay.

JUDGE PLAINE: The pending question is whether or not --

MR. ROTHFELD: Employees.

JUDGE PLAINE: Employees.

MR. ROTHFELD: Of Wickham --

JUDGE PLAINE: Appeared at the meeting.

MR. ROTHFELD: That key personally.

267 JUDGE PLAINE: I think he answered but if you want to ask it again, go ahead.

THE WITNESS: So that I can be complete, at a public meeting of the board individuals were present.

Some I recognized as officials of the union.

Others I do not know whether they were union members or what they were.

MR. TURCHIN: What union was that, sir?

THE WITNESS: Local 3.

MR. TURCHIN: Thank you.

THE WITNESS: In the discussion and the public discussions since the board of education must function in public on all its actions, in the public discussion that took place some of these individuals came up and indicated they had, in one way or another, registered some complaint on kickbacks.

I do not recall anything specific about the prevailing wage rate.

It might have been raised.

I do not personally recollect this was part of the general discussion.

I want to clarify my use of the word hearsay if I may.

JUDGE PLAINE: Yes.

THE WITNESS: I believe as the chairman of the board at that
268 time taking action, whatever was being said before us for our action would be hearsay.

We had no way of knowing whether this was right or wrong from either side and our point that we made in relation to this was that we believed that all other procedures that go into the signing of these documents were fulfilled by staff and those responsible for so doing.

We have procedures for wrongdoings.

We have hearing boards and there are complaints made before them and they are reviewed.

Review board would review these things.

The questions we were asking were were these things brought before the review board, is this the proper place?

It is within this context that I'm citing remarks being made to us I had to refer to as hearsay for the sake of that particular meeting.

There were general discussions on kickback.

There was a general discussion on wages, that the wages, prevailing wages were not paid.

I do not recall whether any individual came up and said I didn't get prevailing wages.

I do know statements were made that prevailing wages --

Q. Were there men there who talked about prevailing wages,
269 who identified themselves as employees of Wickham as such?

MR. TURCHIN: Judge, isn't there some limit to where we are going to go?

I think the witness has answered.

JUDGE PLAINE: The witness said these are people who did not identify themselves as far as he knows.

THE WITNESS: I'm trying to indicate the following:

I do not personally recall an individual who said, "I worked for such and such and I didn't get prevailing wage."

I do recall a number of people saying this in regard to kick-backs.

They did say they had been or were employees, I do not other than what their statement was, I don't know what that reality is.

I do know that the prevailing rates were mentioned. I know they were mentioned because we indicated clearly that the question of prevailing rates was the jurisdiction and responsibility of the office of the Comptroller, but to answer your question, did a specific individual say this?

I do not recall.

I do recall there were mentioned.

Q. Sir, do you know whether the board of education checked
270 even by making a telephone call with Assistant to the Comptroller Howard Babitch to determine the status of the matters before him with respect to the prevailing wage rate claims of employees of Wickham?
A. When these items come before us and are placed on the public calendar for action by the board, they come to us following the procedure whereby it is clearly assumed by us that all these legalities have been met, because it is the responsibility of staff not to present anything to us until that is done.

When there are specific issues raised about a specific case we will ask.

On this particular evening when we went and we asked our staff the questions about the postponement or nonpostponement of this we were told, number one, that there seemed to be, that we were enjoined from not permitting Wickham and Perone to bid and if they did bid we were enjoined from not permitting them to bid and it meant if they did and won the bid we had a responsibility of then having to accept the bid.

These things were done and that was the basis upon which we were acting.

In other words, we did raise specific questions about the legality and about whether there were any improprieties.

271 At that moment our staff indicated to us that we could and the inference was that we should award the contract.

* * * * *

273 MR. ROTHFELD: Judge, you have before you the issue of whether or not Local Union No. 3 asked for a deferral of Wickham Contractors in support of a 8B4B purpose or whether Local 3 asked for a deferral of the Wickham contract based not on the events of the prior summer but on events pending right now and doing it,

274 raising substantive objections which can legally and properly be raised at the forum at which they were raised.

Now, the general counsel has argued the relevance of the contract, Local 3's speeches which was the subject of the October 19 meeting.

Your Honor adopted the General Counsel's argument.

Under those circumstances respondent has no alternative but to set forth to the extent permitted the reasons for Local Union 3's actions, the substance of their allegations, because if their allegations were without substance then Your Honor could find as a finding of

fact that the reasons alleged were not the real reasons and therefore in lieu of asking for the production of a contract which was the subject of the October 19 meeting I will make an offer of proof that if permitted since I am barred from further inquiry as to this contract, if permitted to continue inquiry I would elicit a fact that the board of education did not comply with its own requirements.

That Wickham could not truthfully and therefore most probably did not sign its name to Paragraph Fifth indicating there were no proceedings pending relating to the responsibility or qualifications of the bidder to receive public contracts because there are proceedings

275 pending before the comptroller of the City of New York relating to the prevailing rate of wages.

The New York State Apprenticeship Council by its action de-registering from the apprentice program Wickham's apprentices, those few that may be left to him and are not out on strike, thereby making Wickham ineligible to participate in a board of education contract.

Therefore, all of this would tend to prove that the purposes of respondent with respect to Wickham and that contract were responsibly to act on behalf of its members who are employees of Wickham on strike and represent them with respect to their complaints that they were not paid the prevailing rate of wages by Wickham, and that they were compelled on New York State jobs to give kickbacks, thereby defrauding the State of New York.

That is my offer of proof.

* * * * *

Q. Now, did you state for the record at the October 19th meeting that if the allegations were found that were being forwarded to the New York State Attorney General and to the District Attorney,

276 Bronx County were found to be true, that Wickham would

forthwith be suspended from his job. A. I don't know whether I said that for the record but let me answer you for the record, if I may.

In passing the resolution which was proposed by one of my colleagues on the board, the stipulation with which it was made, the motion was made indicated that the fact that if some of the allegations that were made were proven to be correct and that there were reasons why the contract should not be awarded to Wickham, that the board would then take the appropriate action to rescind the contract.

That is the motion as I recall it and it was passed and seconded by five members of the board who were present.

Q. Commissioner, is there any legal reason or would it be any violation of board of education procedures for that tape to be made available to Local 3 for transcription by a certified reporter and submission as evidence to an appropriate agency?

* * * * *

279 MR. ROTHFELD: Your Honor, I ask for a ruling. Does Your Honor ask that I subpoena the attorneys for the board of education to get answers which you have stated on the record I can't get from anybody but attorneys for the board of education and I am not permitted to ask anybody but attorneys.

JUDGE PLAINE: I have ruled that I would not admit any tape of this meeting into evidence.

New question.

Q. Commissioner Monserrat, have you exhausted your recollection with respect to any demand that Thomas Van Arsdale made upon you or any other member of the board in your presence.

MR. TURCHIN: Objection.

It has been asked three times.

280 JUDGE PLAINE: Next question.

The question is out of order.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Turchin) With reference to your conversation with Mr. Van Arsdale and his proposal you understood that Mr. Van Arsdale was proposing that members of Local 3 would be required to be employed by contractors who were not members of Local 3?
A. I don't know what you mean by contractors being members of Local 3.

Q. Contractors have bargaining agreements with Local 3. That is what I meant by that, sir.

In other words, the contractors who had collective bargaining agreements with Local 3. A. My understanding of the recommendations and the suggestions that were being discussed was that all workers, whether Local 3 and whether 363 and others who might

281 not have been members of either one because of apprenticeship minority regulations, qualifications and et cetera, and factors to this that haven't been raised, but if you are asking for my full recollection I think I better put that into the record.

There are other problems involved with this besides just union membership.

In other words, in order for the board of education to carry on its responsibilities in relation to the contracts about minority hiring and things of that sort, so that these were part of the problems involved in whether you could have a seniority list.

But in keeping with that discussion as I recall the concept of the plan was that as new problems became available workers from

whatever source, either one of the two unions and/or apprentices and/or people to fulfill minority requirements, that these people would be hired in accordance with their seniority on the firing list.

Q. Didn't you preface your remark by saying that Mr. Van Arsdale was concerned, he indicated that concern to you that because of the lag in construction he wished to obtain employment for members of Local 3 with the board of education and that was the purpose of his suggestion. A. I don't know that I made that --

282 Q. Do you indicate Mr. Van Arsdale made that statement to you? A. A statement was made to the effect that because of the nature of the construction industry this form of hiring was being suggested in order to provide employment for a group of workers who had in a sense been working for the board of education for many years, and that this way a way in which these workers could be protected.

Q. Mr. Van Arsdale made it clear to you that these workers were members of Local 3 and that is what he was concerned with?

MR. ROTHFELD: Objection. That is not a question, that is a statement.

MR. TURCHIN: Cross-examination.

JUDGE PLAINE: Put a question mark in there.

Q. Didn't Mr. Van Arsdale make it clear to you that his purpose was to obtain work for these older employees -- older members who had worked for the board who were also members of Local 3 and this was the purpose of his request? A. You have asked me two questions.

Let me try to answer them. It was mentioned by Mr. Van Arsdale about his local members in relation to this? Yes.

283 Was that the main purpose of his request? I have no way of properly answering that.

I assume it may be a logical assumption but I have no way of being able to answer that.

This is what Mr. Van Arsdale said to me.

Q. Were you aware of Mr. McLaren's testimony that approximately 68 percent of the work force of the board of education was being done by contractors who employed employees with members of Local 3? A. I am aware that -- yes, I am aware of the majority of electrical workers are members of Local 3.

Q. So that did you understand from the suggestion of Mr. Van Arsdale he was proposing that employees of Local 3 that is members of Local 3 would be required to be employed by contractors who were not under collective bargaining agreements with Local 3? A. Yes, but the same questions were asked regarding people in 363, whether or not they would be hired by union contractors and the answer to that was yes.

I'm trying to be fair both ways. I think we raised this issue specifically because it has some problems. One of the problems we were trying to raise was how do we meet minority quotas if the firing seniority does not have minority people in it?

You just simply couldn't take people off the list and say that

284 is the way it was because we have compliance regulations which we must meet.

If those people did not meet our apprenticeship quotas we have compliance regulations. These are part of the general discussions of the difficulty of the plan and in discussing it the statement was made that all people would be considered when we hired.

Q. Were you aware of the fact that Local 363 had in excess of the minority employment required by the board of education?

MR. ROTHFELD: Objection, objection.

There is nothing about that in evidence.

JUDGE PLAINE: I don't think we need to go behind all the nuances that troubles Mr. Monserrat and his colleagues.

I don't think it is necessary.

He has indicated that there are a good many problems involving a good many groups and this was a very difficult proposal for them to absorb either factually or legally.

There is nothing --

MR. TURCHIN: I am not arguing with your ruling, Your Honor.

JUDGE PLAINE: Anything more?

MR. TURCHIN: Just two or three questions.

Q. Is it your recollection that Mr. Van Arsdale's proposal
285 intended that the board of education employ members of Local 3 rather than members of Local 363? A. No, it is not my recollection.

* * * * *

288 REDIRECT EXAMINATION

Q. (By Mr. Rothfeld) Commissioner, when you raise the question of the board of education having to meet the requirements
289 with respect to the hiring of minorities did Mr. Van Arsdale say that Local 3 would have no objection whatsoever to have any compliance with such minority requirements, minority hiring requirements superimposed upon any layoff list which Mr. Buxbaum came up with?

MR. TURCHIN: Objection, Your Honor.

If he goes into that now Mr. Rothfeld is going into the same area.

MR. ROTHFELD: Not the same area.

JUDGE PLAINE: You are pursuing all the problems the board might have with this plan.

I don't see that we are getting anywhere.

The board knew it had problems. Then Van Arsdale was giving them a headache, a problem, not curing.

I don't see that this is going to help any.

MR. ROTHFELD: If Your Honor please, the issue before you is whether the walkout related to the layoff plan.

Now, the commissioner testified, not in response to any questions of mine but on his own that he raised the question that such layoff plan might conflict with requirements with respect to hiring of minorities.

I am eliciting a simple yes or no answer.

JUDGE PLAINE: I will change my mind.

Could you answer the question?

290 A. Yes, yes.

Q. The answer to my question as to what Mr. Van Arsdale said with respect to the superimposing of minority hiring requirements was yes? A. The issue was raised. Mr. Van Arsdale indicated that would have to be part of the plan.

MR. ROTHFELD: That is all.

JUDGE PLAINE: Anything else?

You are excused. Thank you, sir.

Off the record.

(Discussion off the record.)

JUDGE PLAINE: On the record.

Whereupon,

BERNARD GIFFORD

was called as a witness and, having been first duly affirmed to tell the truth, testified as follows:

MR. BABISKIN: Before Dr. Gifford testifies, a brief housekeeping matter.

Respondent's Exhibit 1 that was placed in the rejected exhibit file during the testimony of Mr. Monserrat Mr. Regan went back to his office and was able to locate the covering letter and a copy of that document so that in fact he did receive Respondent's Exhibit 1 and therefore we are willing to stipulate it into evidence.

291 MR. FISH: No objection.

JUDGE PLAINE: Let us get it through the witness while the witness is on.

MR. FISH: Not this witness.

MR. BABISKIN: Mr. Regan was the first witness.

JUDGE PLAINE: Oh, Mr. Regan?

MR. ROTHFELD: It went to Regan's office. He failed to identify this document.

It went to his office.

JUDGE PLAINE: I see.

Well, let us get this on the record.

Mr. Babiskin, what is the status of R-1? It is now an exhibit?

MR. BABISKIN: Yes.

JUDGE PLAINE: Being admitted by stipulation.

MR. FISH: Yes, I have no objection.

JUDGE PLAINE: All right.

This was received you say in the office of Chairman Regan of your board?

MR. BABISKIN: Yes. Mr. Regan informed me just now that the letter he received, a copy of that Respondent Exhibit 1 after the meeting testified to in Deputy Mayor Cavanaugh's office, so he got afterwards. The exact sequence I do not know.

Just that Mr. Rothfeld asked Mr. Regan whether --

292 MR. FISH: Whether the board received it and now we can stipulate they did.

JUDGE PLAINE: After the meeting in the mayor's office?

MR. BABISKIN: That is correct.

MR. ROTHFELD: Did he say that, did he give the date of the covering letter?

MR. BABISKIN: No, he did not, just told me he did --

MR. ROTHFELD: Was it the next business day, the Monday after?

MR. BABISKIN: He just stated he did in fact receive the letter and it was after the mayor's meeting and he left.

JUDGE PLAINE: Do you want that in as a stipulation then? I guess that is the best we can do with it.

I don't see anything else we can do.

R-1 will be removed from the rejected file and into the file as R-1 in evidence by stipulation of the parties.

It being further indicated by counsel for the board of education that Mr. Regan received it after the meeting in the mayor's office as to which he testified in this trial.

Now, can we proceed with the examination of the next witness?

DIRECT EXAMINATION

293 Q. (By Mr. Rothfeld) Dr. Gifford? A. Right.

Q. You have given your name and address? A. I have given my name.

JUDGE PLAINE: Give it to me, please.

THE WITNESS: My name is Bernard Gifford.

My position is deputy chancellor New York City Board of Education, I reside at 385 Garfield Place, Brooklyn, New York.

JUDGE PLAINE: Thank you very much.

Proceed.

Q. (By Mr. Rothfeld) Dr. Gifford, as deputy chancellor of the board of education did you attend one or more meetings during the months of July and August at which Thomas Van Arsdale was present? A. Yes, I attended two meetings at which Mr. Van Arsdale was present.

The first meeting took place on July 25, in my office and the second meeting took place in the office of the deputy mayor.

Q. Do you happen to have taken notes of either of those meetings? A. No, I did not.

JUDGE PLAINE: Do you happen to remember the day in August this meeting took place?

294 THE WITNESS: It was the day referred to previously. The meeting attended by the president to the board, Jimmy Regan and Joseph Monserrat.

JUDGE PLAINE: I wasn't able to identify the precise date. I wonder if you can.

THE WITNESS: I believe it was August 6, but check --

JUDGE PLAINE: Is there a way you can ascertain that?

THE WITNESS: Yes, I could.

JUDGE PLAINE: Maybe you will supply it for the record.

THE WITNESS: Yes.

Q. Dr. Gifford --

MR. BABISKIN: Excuse me, Your Honor.

We are willing to stipulate that the date of the meeting in the deputy mayor, Cavanaugh's office was August 20.

MR. ROTHFELD: I don't know the date.

THE WITNESS: That is the date. It was only one meeting and that is the one I attended.

MR. ROTHFELD: I don't believe counsel intended to correct any error of the witness.

MR. BABISKIN: No.

JUDGE PLAINE: The witness said he was not sure. He hazarded a guess.

295 You have the precise date?

MR. BABISKIN: That is correct.

JUDGE PLAINE: That is something you have ascertained from records?

MR. BABISKIN: That is correct, the 20th of August.

JUDGE PLAINE: I will accept it for the purposes of this record unless there is some challenge of it.

MR. ROTHFELD: No.

Q. Dr. Gifford, did you perhaps meet more informally with Mr. Van Arsdale on or about August 6? A. No.

Q. Your only meetings with those two formal meetings? A. July 25 meeting was an informal meeting held in my office.

The August 20 meeting if you want to call it a formal meeting was the only formal meeting.

Q. And those were the only two occasions during those two months when you met with Mr. Van Arsdale? A. Yes, sir.

Q. Let us take the July 20 meeting.

Who was present? A. Mr. McLaren, the executive director of the division of school buildings of the New York City Board of Education, Mr. Van Arsdale and a Mr. O'Mara.

296 Q. O'Hara. A. O'Hara, and myself.

Q. Sir, would you please think a bit and then tell us everything you remember about what Thomas Van Arsdale said to you. A. Well, I will have to get you a little background.

I had been informed by Mr. McLaren that there had been some sort of job action that was threatening the completion of a number of schools that we were anxious to open by September.

I asked Mr. McLaren what was going on and he suggested that the four of us meet or the three of us meet with Mr. Van Arsdale, Mr. O'Hara and then we did meet in my office at approximately 4:30.

We talked for about two hours.

I must say I thought initially the problems in getting the schools completed had something to do with the hiring, the minority hiring program.

In fact, there had been actually a blurb on the radio saying that Local 3 was protesting the New York Plan.

I was anxious to ascertain at the meeting whether or not the job action or the problems we were having had anything to do with the minority hiring plan.

It took less than five minutes for me to be convinced that at least there was no evidence to support the fact that this had something to do with minority hiring.

297 Mr. Van Arsdale I think, for the record I think was somewhat disappointed at my presence at the meeting.

The chancellor was on vacation and I was serving as acting chancellor and I think because of my presence probably did not say to me I think what he really wanted to communicate to the chancellor and board of education.

At the meeting Mr. Van Arsdale spoke repeatedly of the need to provide jobs security for members of Local 3.

He went into a great detail into the long history and association of Local 3 and the New York City Board of Education and the City of New York, and it was I would say a good 50 percent of the meeting,

a kind of a self-congratulatory exposition on what Local 3 had done for the city and for the board of education.

I was anxious to get to the bottom line and find out how we could get the schools opened and listened for a long time and I kept on attempting to press Mr. Van Arsdale for answers to what could we do to help him.

It became obvious that there were some problems between Local 3 and 363.

Mr. Van Arsdale related a number of accusations vis-a-vis the apprenticeship program, related a number of allegations about kickbacks.

I explained to him that I was not a hearing officer I could not sit in on judgment.

298 Q. A little louder. A. I could not sit in on judgment and he pointed out he was letting me know and that also some of the statements he made he said were actively under investigation and I think he was telling me for information purposes.

I wanted to make sure he understood that.

He went on a long time about job security and the need to provide some sort of job security for Local 3 people.

I kept pressing him what did he want me to do, to recommend to the board of education? Did he have anything concrete?

At no time did Mr. Van Arsdale present a concrete proposal to me. No time did he give me a sense of what he wanted.

At no time did he give me anything I could sink my teeth into.

I was anxious to do so because I wanted to be able to go back to the board and relate to them Mr. Van Arsdale's concerns.

After about two hours I made a suggestion to Mr. Van Arsdale.

I requested he put in writing what he wanted me to do or request from the board of education.

299 I also suggested that once he reduced to writing his demands that we set up a meeting between him and the board of education.

He promised me he would deliver something in writing and to this date I still don't have that, so that meeting was rather uneventful.

Q. Dr. Gifford, did Mr. Van Arsdale tell you that he had had conversations with Deputy Corporation Counsel Buxbaum? A. Yes, he did.

Q. Did he tell you he had made certain requests of Dr. Buxbaum with respect to a layoff plan? A. He did not go into any details. He spoke in general terms of job security for his union.

He spoke of an attempt to work out a plan to provide job security for his men with the city, but again he did not provide me with any details.

He spoke in very general terms.

Q. Did Mr. Van Arsdale tell you Mr. Buxbaum had told him he was working on the legalities of the plan? A. He did tell me that he and the city were in consultation.

He did not use that -- I don't recall him using those kinds of expressions but he did tell me, he informed me that they had been in consultation with the city and they were working on something to insure

300 job security for members of his union.

Q. Did he tell you he had in fact asked the deputy corporation counsel to devise a plan that was in his view legal? A. I'm not sure if he said it in those words.

Again we never talked in the kind of detail that would permit me to answer your question with a yes or no, and he spoke in very general terms.

Q. Okay. A. It was very obvious to me that he had prior conversation with people in the mayor's office, either the deputy

mayor or corporation counsel's office and he just felt that his request to me was a little bit misdirected unless he could give me, you know, direction.

He was not at that time prepared to give me anything in writing or was he in a position to describe to me with any degree of certainty or definiteness what he wanted.

Q. You keep saying he talked to the city and the corporation counsel.

Did he name Mr. Buxbaum by name? A. I believe he did speak of Mr. Buxbaum.

I think he might have mentioned the name. I don't have notes.

Q. Let us take the more formal meeting. Do you recall who
301 was present? A. At the informal meeting?

Q. The formal meeting. A. Yes, which took place August 20th in Deputy Mayor Cavanaugh's office.

The chancellor had returned from vacation and was present. That is Irving Anker.

JUDGE PLAINE: That is his name?

THE WITNESS: Irving Anker.

A. (Continuing) The president of the board of education Mr. James F. Regan, Mr. Joseph Monserrat, Amelia Ashe, member appointed by the mayor and Dr. Robert Christian, a member representing the Borough of Bronx.

Mr. Joseph Barkan, a member representing the Borough of Queens.

Q. And yourself? A. And myself.

Of course Mr. Buxbaum was also there with Deputy Mayor James Cavanaugh.

Q. Try to recall and try to exhaust your recollection with respect to everything Mr. Van Arsdale asked or demanded of the

board of education at that meeting. Take your time. A. Well, at that meeting Mr. Van Arsdale -- again there was nothing in

302 writing -- spoke largely in terms of job security for members of Local 3.

He talked about a layoff plan, talked about a layoff list.

The president of the board, spokesman of the board expressed great concern that any layoff list or layoff plan should not exclude the possibility of hiring minority workers.

I think there was some affirmation by Mr. Van Arsdale that the intended plan was not to lay off minority workers.

It was not to exclude minority workers but it was to provide some sort of job security for Local 3 workers.

In terms of direction the board's position, if I recall it correctly, was --

Q. Excuse me, Dr. Gifford, my question at this time is not the board's position.

My question is will you please exhaust your memory with respect to any demand or request of Mr. Van Arsdale made of the board? A. Well, as I recall the problem was not so much the board because the board has a contract, a standard contract, standard procedures that he felt it had to adhere to.

We were also reluctant and when I say we, the administrative side of the system, not the policymaking side, we were also reluctant to explore anything in any great detail because we felt were not the

303 not the employers of Local 3 nor were we the employers of Local 363 and we felt any hiring plan, any layoff list plan, any sort of plan requiring hiring and firing of personnel should rightfully be negotiated with the Contractors Association.

There were a number of comments through this meeting that we don't employ Local 3 people directly, they are not on the board of education's payroll.

We have a contract with the contractors.

It is let through a competitive bidding process pursuant to state education law and any list would have to be -- any program, any change in hiring procedures would have to be something that would have to be accepted by the City of New York, and upon acceptance by the City of New York they would have the right to place it in the Board of Education contract.

Q. Dr. Gifford, having you exhausted your recollection with respect to any request or demand that Thomas Van Arsdale made at that meeting? A. I believe I have. I think in my statement I have.

JUDGE PLAINE: One question, Dr. Gifford. Was Mr. Van Arsdale addressing himself to the contracts that the City of New York as a municipality to let, in addition to Board of Education contracts, the board lets for the City of New York?

THE WITNESS: I believe Mr. Van Arsdale was addressing
304 himself to the City of New York but --

JUDGE PLAINE: Work let by them as well as work that you --

THE WITNESS: Yes, I was under the impression he was talking about a wide agreement.

I should also point out that Mr. Van Arsdale was sort of confused over the legal relationship between the New York City Board of Education and the City of New York.

I think his confusion as to the powers and authorities of the Board of Education was expressed in both the July 25th meeting and the August 20th meeting when it was apparent that at one moment he would look for direction from the deputy mayor and he did not quite understand that even if the city came up with a citywide procedure it did not automatically apply to the board of education.

It was during this August 20th meeting that it was pointed out to him that even if the city did come up with a citywide agreement the board of education would still have to deliberate.

JUDGE PLAINE: And deal with it?

THE WITNESS: And deal with it.

Q. Dr. Gifford, at that August 25th meeting your attorney was corporation counsel Buxbaum who was corporation counsel for
305 the City of New York, was he not? A. Yes.

Q. Is it not also true that whenever Local 3 negotiates prevailing rate of wages terms with the controller of the City of New York for New York City electricians that those terms and conditions are invariably applied by the Board of Education to these electricians which it chooses to hire directly? A. Yes.

MR. ROTHFELD: That is all.

CROSS EXAMINATION

Q. (By Mr. Fish) Dr. Gifford, in the July 25th meeting when you indicated Mr. Van Arsdale began a long exposition as to the history of the relationship between Local 3 and the board of education, et cetera, and he had expressed concern about the job security for his members, did he indicate at all to you what it was that was threatening the job security of his members? A. He did not go into any detail and I did not question him but based on information I had --

MR. ROTHFELD: Objection.

Q. No, what I am asking you -- A. No, he did not.

Q. Did he say anything at all about what it was that was threatening the job security? A. He alluded to a jurisdicational
306 or some sort of dispute between Local 3 and Local 363.

Q. Did he indicate to you that contracts had been recently awarded to contractors who were not represented by his union?
A. He did point out that the board of education had let contracts to contractors employing 363 workers.

Q. Did he happen to name any of those contractors?
A. He named Wickham and Perone.

MR. FISH: No further questions.

REDIRECT EXAMINATION

Q. (By Mr. Rothfeld) When did he name Wickham and Perone? A. In our July 25 meeting, during the course of discussion he did mention in talking about job security, he did mention the fact that a number of people who were not members of Local 3 were employed by a number of contractors that had been successful through a competitive process in winning board of education bids.

Q. With respect to Wickham and Perone did Mr. Van Arsdale say at that time that he knew whether Wickham was on the job or off the job, if you remember? A. If my recollection is correct I think at that time Mr. McLaren had already issued his letter requesting that certain contractors comply with Section -- I think there is a Section 5 in the contract.

307 Q. Sir, I wish you would please address yourself to my question, not what Mr. McLaren did but did Mr. Van Arsdale say anything about whether Wickham was on the job or off the job?
A. No, no.

Q. Did he say anything to indicate that he knew whether Wickham was on the job or off the job? A. I don't recall.

Q. Did he say anything about Wickham should be put off the job or kept off the job? A. Not in those words. He complained about contractors that did not employ Local 3 workers, but it was a generalized complaint.

I pointed out that there was a bidding procedure that by law we have got to follow.

Q. Sir, please.

JUDGE PLAINE: Let the witness answer.

Q. Confine yourself to my questions.

JUDGE PLAINE: Let him finish his answer. He is trying to meet your requests.

Have you finished your answer?

A. (Continuing) You see, you have to understand that that July 25th meeting was a very informal meeting and Mr. Van Arsdale felt that it was necessary to instruct me as well as to consult with me.

308 He was very general and I am attempting to give a flavor of that meeting which was rather informal.

Q. He was looking to acquaint you with the problems with which you might not be familiar? A. Yes.

Q. Did Mr. Van Arsdale say anything to indicate that Local [illegible] electricians returning to the job depended in any way on whether the board of education kept Wickham off the job or put them on the job? A. No.

Q. He did not? A. He did not relate it to that.

MR. ROTHFELD: That is all.

MR. FISH: Nothing further.

MR. BABISKIN: No questions.

JUDGE PLAINE: You are excused.

Thank you very much, Dr. Gifford.

* * * * *

311 JUDGE PLAINE: Counsel, really, the question that is being put and it is noted in writing in the motion to quash, the testimony of these people would be cumulative. Now, that is what we are asking you to address yourself to.

Is there something beyond what we already have covered that these people will supply for the record and help us in our deliberations?

* * * * *

312 MR. ROTHFELD: Judge, it is the problem that you pose is that I set four dates.

313 Neither Mr. Van Arsdale nor I have the precise dates.

My questions with respect to each person who so far has testified related to dates during the months of July and August.

It is my understanding that different members met with Mr. Van Arsdale at different times.

* * * * *

I understand these people met with Mr. Van Arsdale during

314 the months of July and August and I think that is specific enough to place it within the time frame work of this complaint and to destroy the charge of fishing expedition.

As to the cumulative argument, first to the extent that any of them met on any date which was not so far covered it obviously would not be cumulative.

Secondly. with respect to the meeting of August 20 I don't know that those witnesses who testified with respect to that meeting all concurred precisely in this account of that meeting.

Thirdly, even if those other members of the board of education were to concur in what was already testified to I believe that would very strongly bolster the argument of the respondent, the contentions of the respondent as to the nature and purpose of the work stoppage and since they are members of the charging party I believe the testimony of every one of them is entitled to weight.

They are all distinguished persons.

With respect to the harassment charge, as counsel Babiskin has already stated, I have made substantial effort to suit the convenience of everybody.

It is my understanding, I believe it to be so that at 110 Livingston Street, a stone's throw from here the board of education is having a meeting.

315 I did all I could to arrange everybody's schedule so that the date on which I would call them would be the date of their meeting.

They can all be here in a couple of minutes.

If what they say is cumulative then their testimony would last only a couple of minutes.

If what they say varies from what was said previously then it would not be cumulative.

Therefore --

JUDGE PLAINE: Is the board in a meeting right now?

MR. ROTHFELD: I don't know the precise hours of the meeting but I believe there is an all day meeting scheduled for today.

* * * * *

318 JUDGE PLAINE: Why do you need more?

MR. ROTHFELD: Because I want the whole truth and nothing but the truth on the record.

I want the board to have before it what every member of the charging party heard so that the board and the courts, if necessary, will make their determination as to what were the purposes of the union in connection with this stoppage, whether they were 8B4B purposes or whether they were purposes covered by another section of the Act.

JUDGE PLAINE: The board and courts don't need cumulative evidence and indeed discourage the use of cumulative evidence.

They speak in terms of expedition and trying to get things done quickly and without repetition, and I am fully cognizant of that desire on their part.

319 Now, you have already indicated to me that the board members who have testified, including those two who chaired two of the meetings have given you pretty much what you want.

You don't quarrel with that?

MR. ROTHFELD: Pretty much but not altogether, Judge, and I understand there were other meetings which those who testified this morning did not attend.

I don't know the precise dates, and if a Ph.D. does not remember the date and commissioners don't remember dates I don't know why you should ask that union officials remember exact dates.

* * * * *

324 JUDGE PLAINE: * * * It seems to me that what you are doing now is simply duplicating, hoping to turn up something that may be wasn't covered by one of these others and I think, in my own opinion, that this is oppressive.

* * * * *

325 I therefore am inclined to grant the motion and I do grant the motion to quash the subpoenas that are outstanding to the other members of the Board that have been named.

* * * * *

329 JUDGE PLAINE: On the record.

MR. ROTHFELD: Your Honor, there is now in evidence as Respondent's Exhibit 1 a one sheet draft of a layoff plan.

You will recall that it was testified to on behalf of Chairman Regan by Attorney Babiskin that Chairman Regan found, after going back to his office, that this document came in with a letter.

I now have a copy of that letter.

JUDGE PLAINE: You would like to substitute the letter and its attachment for what we now have as R 1?

MR. ROTHFELD: Yes, Your Honor.

MR. FISH: No objection.

JUDGE PLAINE: It will be ordered that the letter dated August 21, 1974 from Thomas Van Arsdale to Mr. James F. Regan, President of the Board of Education and its attachment, a one page attachment shall be substituted and become Respondent's Exhibit 1 in place of what is now marked as R 1.

The Court Reporter is authorized to withdraw and return to respondent's counsel the former R 1 and accordingly mark this one.

(Respondent's Exhibit 1 heretofore marked was withdrawn and substituted by the above described document.)

330

Whereupon,

BERNARD ROSENBERG

having been called as a witness, having been first duly sworn by Judge Plaine, was examined and testified as follows:

JUDGE PLAINE: Will you state your full name and address for the record?

THE WITNESS: Bernard Rosenberg, 31 Piper Drive, Shearingtown, New York, Nassau County.

DIRECT EXAMINATION

Q. (By Mr. Rothfeld) Mr. Rosenberg how long have you been a business representative of Local Union No. 3?

A. Approximately six years.

Q. Do you specialize to some extent in the Board of Education? A. Yes, I do.

Q. Do you know the nature of the work done by a electrician employed by electrical contractors performing work at schools?

A. Yes, I do.

Q. Is that work considered a specialty? A. Yes, it is.

Q. Generally speaking, in the electrical industry what happens when an electrician employed by an electrical contractor

331 is laid off if that contractor has a collective bargaining agreement with Local Union No. 3? A. The electrician reports to the Joint Industry Board of Electrical Industry and he has a termination slip that is given to him by his employer indicating that his job is completed, or if he was terminated for any other reason.

Also in describing the type of work that this man has performed.

This man then presents this layoff slip to the union employment office of the Joint Industry Board.

There that man is placed on a list if there is unemployment.

If there is full employment he is then rotated out again to another employer.

Q. This list you described if there is unemployment, are employers required to interview employees from that list based upon the particular place, their particular place on the list, based upon the date of their layoff? A. The employers do not interview any of the employees before they go to work for them.

They call the Joint Industry Board and request a journeyman or an apprentice and then based on a rotation system these men are then referred out to the contractor who has made that request.

332 Q. Sir, are there electricians who are members of Local 3 who specialize as school electricians? A. Yes.

Q. Have any of these electricians spoken to you with respect to their desires in connection with layoffs? A. Yes.

Q. What have they said? A. They have said to me that their work opportunities are decreasing and they are concerned about continuing to work on Board of Education jobs.

Q. What do they want to be done with respect to when they were laid off? A. Well, they wanted assurances from us, the union that we would guarantee them or try to help them to go back to work on Board of Education jobs.

Q. They are familiar with the Joint Industry Board layoff system are they not? A. Yes.

Q. Is that what they want with respect to the Board of Education jobs in summary? A. In summary the thought was that these men felt that they who work on school jobs for many many years and develop expertise working on school jobs and when they are laid off, and when another contractor receives a job from the Board of Education, they would in turn rotate over to that contractor and

333 continue to do work for the Board of Education on school jobs.

Q. The collective bargaining agreement industry wide between Local 3 and the various electrical contractors in the City of New York expired on June 30th, did it not? A. Yes, it did.

Q. Then it was extended for how long? A. To July 11th.

JUDGE PLAINE: What year are we talking about?

MR. ROTHFELD: 1974.

THE WITNESS: 1974.

JUDGE PLAINE: What were those two dates again?

THE WITNESS: June 30, 1974 and then the contract was extended to July 11, 1974.

JUDGE PLAINE: This is the contract --

THE WITNESS: A collective agreement with the employers of the electrical industry of Local 3.

JUDGE PLAINE: Of Local 3?

THE WITNESS: Yes.

JUDGE PLAINE: Largely New York City?

THE WITNESS: New York City, five boroughs.

JUDGE PLAINE: It was extended to --

THE WITNESS: July 11th.

Q. At about that time what did some school electricians say to you? A. At the time, after July 11th we had no collective
334 bargaining agreement and many of the men indicated to me that they wanted to continue to go to work on schools and that being there was no contract they didn't want to work, they were protesting that we weren't giving them assurances to continue to work on Board of Education jobs.

Q. Did you and Local 3 then tell them that there being no contract you would support their walkout? A. Yes, I told that to the men and let other people know at Local 3, Local 3 told them the same thing.

We would support their position being that there was no contract, no work, that every man has a right to withhold their labor.

Q. If the collective bargaining agreement had been in effect would Local 3 have permitted anybody to walk off?

MR. FISH: Objection.

JUDGE PLAINE: I think that is speculative.

It demands on the circumstances. There are a lot of ifs.

Let us not talk about what might have been.

MR. ROTHFELD: Judge, all I can do is ask questions and elicit rulings.

I think it is proper to show the position of the union, the legal and financial position, what it was with respect to their rights to approving walkouts or not to approving walkouts.

335 My offer of proof would be that Local Union No. 3 approved of this walkout by school electricians only because --

JUDGE PLAINE: That wasn't your question.

The question was suppose there was a different situation, what would they do?

And all I am suggesting to you is that that is not evidence.

MR. ROTHFELD: All right.

Are you saying, Your Honor, your question is not to be answered.

JUDGE PLAINE: I don't think it is evidentual of anything.

What they might have done if a situation were different.

Q. Mr. Rosenberg, before the contract expired on June 30, 1974 and before its extension to July 11, 1974 ended, did school electricians protest their lack of job security? A. Yes, they did.

Q. Did you then permit any of them to walkout? A. No.

Q. If the collective bargaining agreement had continued on June 30, 1974 or its extension had continued on July 11, 1974 would the union have permitted any walkout?

MR. FISH: Objection.

336 JUDGE PLAINE: I'm going to sustain the objection.

MR. ROTHFELD: All right, my offer of proof --

JUDGE PLAINE: Is that they would not?

MR. ROTHFELD: Yes, through the witness if I am permitted to continue this line of questioning, and that is the only reason why the union permitted the walkout, because none of the electricians involved were at that time covered by a collective bargaining agreement sitting forth wages, hours and terms and conditions of

employment were being negotiated for a wage increase, I might add because of the inflation, and that the union did not feel that as a matter of law it was obligated to require its members or other persons whom it represented to continue working under an expired contract under obsolete wages, hours and terms and conditions of employment.

That is my offer of proof.

JUDGE PLAINE: Noted.

Q. Were there ever any pickets, Mr. Rosenberg, at any job? A. No, sir.

Q. Was any delivery whatsoever interfered with? A. No.

Q. Was there even any electrician at any job site to see
337 whether any deliveries were being made? A. No.

Q. So the union has no idea how many deliveries were made; is that right? A. That is correct.

Q. Was there anybody there who could conceivably have interfered with anybody's ingree or egress?

MR. BABISKIN: Objection.

MR. FISH: There is no allegation that any of these things occurred.

JUDGE PLAINE: Conceivably?

MR. ROTHFELD: I say conceivably because if there was nobody there at the site then as I am seeking to elicit it is physically impossible for there to have been any interference with any ingress or egress.

JUDGE PLAINE: You have the witness' testimony and you will have him argue his case too?

MR. ROTHFELD: All right, you are sustaining the objection then?

JUDGE PLAINE: Yes.

You have covered it in the previous question.

As far as he knows he didn't know of anybody who was there, no pickets, no deliveries interfered with.

That is his knowledge.

Q. Mr. Rosenberg, I'm not asking you as far as you know, I am asking you do you know it as a positive fact that there were no
338 electricians at these construction sites who could have interfered with ingress or egress? A. There were no electricians that I know of that were on any of these job sites that could have interfered.

Q. At any time during the time of the walkout? A. That is correct.

JUDGE PLAINE: That is the period.

THE WITNESS: It was a two month period of July to the end of August.

I'm not too familiar with the exact dates. The beginning of September.

I don't have the exact dates.

Q. Did any officer, agent or representative of Local Union No. 3 at any time request any employee working at any other trade not to perform any work, labor or services at any construction site? A. No.

Q. Did any officer or representative of Local Union No. 3 make any request to any representative of any other labor organization that any employee, that any union member of any other union not perform any services? A. No.

Q. Did any officer or representative of Local Union No. 3 at any time request or demand that any employer of employees cease
339 to schedule labor at any of the construction sites? A. No.

* * * * *

345 Q. Mr. Rosenberg, is there any supervision by employees of the Board of Education of electricians employed by electrical contractors at the construction jobs sites? A. Yes.

Q. Mr. Rosenberg, do these employees who specialize in public school sites necessarily remain with the same electrical contractor or do they move from contractor to contractor to contractor? A. They move from contractor to contractor.

Q. At the end of every job whenever their particular job is finished they go back to the Joint Industry Board for another assignment, perhaps with another contractor; is that correct? A. Yes.

MR. FISH: Mr. Rothfeld would you like to testify or would you like Mr. Rosenberg?

JUDGE PLAINE: You might confine it to direct questions instead of leading.

MR. ROTHFELD: Is there any question, Your Honor, as to the truth of anything I am eliciting?

JUDGE PLAINE: No, but you are getting counsel upset about leading the witness.

MR. ROTHFELD: I'm sorry to upset counsel.

JUDGE PLAINE: Don't lead the witness.

346 MR. ROTHFELD: The last thing I want to do is upset Mr. Fish.

He is a gentleman and scholar of the finest order.

JUDGE PLAINE: He prefers the witness' testimony rather than you.

MR. ROTHFELD: All right.

Q. Mr. Rosenberg, do these men, these employees working at public schools over the years, as far as they are concerned do

they regard themselves as having a relationship with the Board of Education. A. Yes, they do.

* * * * *

351 Q. Are there any electricians who work exclusively year after year on board of education jobs? A. Yes, there are.

Q. As to those men --

MR. BABISKIN: Excuse me, I just want to make sure we are clear, when you use the term board of education jobs you are referring to electricians who work for contractors who happened to have successfully bid for a contract let out by the board of education

352 under law; is that what we are talking about?

MR. ROTHFELD: Yes, we are, we are.

MR. BABISKIN: Okay, fine.

Thank you.

Q. Those electricians, do they spend all their time on the board of education construction site? A. Yes, they do.

Q. How much time, if any, do they spend in the office of the electrical contractor? A. On, very little time in the office. Most of their time is on the board of education job site.

Maybe the foreman would have some occasion to spend some time in the office but the men themselves spend most of the time, if not all the time, on the job site.

Q. Do the men necessarily go to the office of the contractor to pick up their paycheck? A. No.

Q. How do they get paid? A. Usually the employer or employer's representative visits the job on payday and distributes the pay checks.

Q. At the site? A. At the job site, yes.

JUDGE PLAINE: You say the employer's representative.

THE WITNESS: Yes.

JUDGE PLAINE: Not the board of education representative?

353 THE WITNESS: The subcontractor's representative.

MR. ROTHFELD: Your Honor, I don't contend that the subcontractors are not also employers. I claim an employment relationship with both the subcontractors and the board of education so that it is clear.

JUDGE PLAINE: Who are you calling subcontractors?

MR. ROTHFELD: Electrical contractors are subcontractors as distinguished from the general contractors who may, by Section 103 of the general municipal law not directly hire electricians.

JUDGE PLAINE: I have lost you there. You better get your witness to explain the contracting business, how it goes.

Q. Mr. Rosenberg, are the electrical contractors all subcontractors, or almost all? A. Almost all subcontractors, yes.

Q. Now, a general --

JUDGE PLAINE: They are subcontractors of a general?

THE WITNESS: Of the general contractor.

JUDGE PLAINE: Not of the board itself?

THE WITNESS: Hold it, Your Honor. The contractor, electrical contractors bid a job by the board, from the board of education.

They are given the job as the lowest responsible bidder and

354 the board of education awards the job to the contractor.

JUDGE PLAINE: Is there a general electrical contractor or a general construction --

THE WITNESS: An electrical contractor who only does electrical work, electrical contracting.

JUDGE PLAINE: Bids directly to the board?

THE WITNESS: To the board of education.

JUDGE PLAINE: He doesn't have a general construction contractor intervening in between him and the board?

THE WITNESS: On most cases he would bid directly from the board of education.

JUDGE PLAINE: Is this only in repair work or in general?

THE WITNESS: It could be new work, yes.

JUDGE PLAINE: So the board lets more than one contract in the construction of the building is what you are saying?

THE WITNESS: Yes.

JUDGE PLAINE: And there is a general electrical contractor?

THE WITNESS: He is an electrical contractor. All he does is electrical work. He is awarded a job from the board of education because he is the lowest responsible bidder.

JUDGE PLAINE: He bids directly to the board?

355 THE WITNESS: Directly to the board as was described at testimony on October 19th meeting when there was a hearing.

JUDGE PLAINE: Who are the subcontractors we are talking about?

THE WITNESS: We are talking about --

JUDGE PLAINE: Subcontractors.

THE WITNESS: Subcontractors.

JUDGE PLAINE: But the general electrical contractors sub-contracts his work?

THE WITNESS: No, Your Honor.

I am confused when you mention general electrical contractor. There is only one electrical contractor usually on a school job, on a board of education job, and that job is awarded to the contractor from the board of education.

JUDGE PLAINE: He normally does not subcontract it?

THE WITNESS: No, he would complete the job himself. He would complete that job.

He is responsible for the electrical installation as prescribed by the contract.

JUDGE PLAINE: What would the general contractor be concerned with?

THE WITNESS: The general contractor perhaps would be concerned with the foundations and the concrete and brickwork.

356 JUDGE PLAINE: How about plumbing?

THE WITNESS: Well, the board of education also subcontracts out work to contractors who do plumbing.

The lowest responsible contractor who is a plumbing contractor

MR. ROTHFELD: Judge, that is pursuant to Section 103 of the general municipal law which requires that whatever the board of education or other governmental agency chooses not to perform the work with his own directly employed employees it must subcontract electrical work, plumbing work and air conditioning work to contractors of that kind who do that work.

MR. BABISKIN: Your Honor --

MR. FISH: It's not a subcontractor, a contractor. You generally have a general contractor on an ordinary job and he in turn contracts, but that is not what we have here.

THE WITNESS: No, we don't have that.

JUDGE PLAINE: So what we are talking about in the construction or repair of school buildings, there will be a number of individual contracts with certain skills, plumbing, electrical heating?

MR. ROTHFELD: Plus a general contractor.

JUDGE PLAINE: Plus a general contractor who may sub contract.

MR. ROTHFELD: He may not subcontract electrical work.

357 JUDGE PLAINE: He may subcontract his work.

MR. ROTHFELD: His work, laborers work and other bricklaying work.

JUDGE PLAINE: Are the specialties like electrical and plumbing permitted to subcontract?

THE WITNESS: Your Honor, it is usually not done. Usually the mechanical trades are contracted out directly by the board of education.

That has been the practice.

Q. Mr. Rosenberg, do these electricians report to work in the morning at the premises of a electrical contractor or do they go directly to the job site? A. They report directly on the job site.

Q. And do they go home directly from the job site? A. They go home directly from the job site.

Q. How often might they meet the owner of the electrical contracting firm? A. They might never meet him. You know, might meet him on a rare occasion.

Q. You mean like at birthdays and weddings and Bar Mitzvahs? A. Could be if you got invited.

* * * * *

360 MR. ROTHFELD: Based upon the witness' knowledge of the electrical business I ask that I be permitted to ask him questions as if he were, as I believe he in fact is an expert witness with respect to school electrician.

JUDGE PLAINE: What does he know about state government, state and municipal law and municipal employment, employment

by state government and what effect the statutes have on direct employment of these people. He knows nothing about it and don't let's waste time.

If you have an argument, sir, that these are direct employees of the board of education of the City of New you make it in your brief.

Any facts you have got I will consider.

I will consider whatever facts you think you have demonstrated here but I am not going to go beyond that. I don't want his opinion on that.

MR. ROTHFELD: My question relates to the "realities of the economic situation" referred to in the dissenting opinion in Denver Building Trades.

I don't claim they are direct employees. I claim they have an employment relationship such as it is, and I would like to explore how much it is.

If I am foreclosed from continuing that examination I must, of course --

361 JUDGE PLAINE: I didn't foreclose. I said give me facts, not his opinions.

MR. ROTHFELD: Your Honor, I'm sorry.

Q. Mr. Rosenberg, have these electricians told you how they regard their employment relationship?

JUDGE PLAINE: Objection sustained.

MR. ROTHFELD: I respectfully except.

Q. Mr. Rosenberg, there came a time when you had dinner with Mr. Biele of Wickham? A. Yes.

Q. What did you say to Mr. Biele? A. Oh, we had a meeting. I believe it was July 25th in the evening in the Bronx and

it was quite a lengthy meeting and during the course of our meeting I told Mr. Biele the purposes, one of the purposes of our meeting was that I represented some of their men; I don't know the percentage of their men who showed an interest in coming into Local Union No. 3 and that I asked Henry if he would consider that and sign a consent agreement with Local 3.

MR. FISH: Sign what?

THE WITNESS: Consent agreement with Local Union 3.

A. (Continuing) I also -- during the course of the conversation we discussed the advantages of signing a collective bargaining agreement with Local Union No. 3 and of course I went into that with him.

362 He indicated to me that he didn't think he was ready to come into 3 and that we would leave the discussions open for a further date.

During the course I mentioned -- at the beginning of the evening I believe I mentioned to him that we did have an interest from his men and that interest is, of course -- had been indicated by signing of cards.

I never showed him any of the cards.

I did not show him any of the cards and we never discussed it but I had the cards on me because that was confidential and secret and I did not want any of his men at that time to be fired if he knew who they were who showed an interest in Local 3.

Q. And Mr. Biele said to you that he wasn't ready? A. He said he wasn't ready at that time to come into Local 3. He is not sure and we would leave discussions up to a future date.

Q. At that time you did not pull the men out on strike; is that correct? A. No, sir.

* * * * *

366 Q. Mr. Rosenberg, as an objective fact did you want the Wickham employees to vote on September 19, 1974? A. Yes.

Q. And if you had pulled them out on strike do you know whether or not such votes would be challenged? A. I did not know if those votes would be challenged or not. I thought those votes would be challenged if I pulled those men out on strike in July.

Q. Immediately after the Wickham employees voted in the NLRB election in Region 2 did you then pull them out on strike? A. Yes. The vote was on a Thursday. The ballots were counted on a Friday and we pulled -- we started to pull the men out on strike that following Monday.

I believe we have approximately 17 men out on strike.

Q. You have heard mention that Iovine Electric was at certain schools. You heard that testimony yesterday, was working on certain schools. A. Yes, sir.

Q. When did you first find out that Iovine Electric was working at those schools? A. Yesterday.

Q. Did you know prior to yesterday whether Iovine Electric
367 had gotten letters from the board of education? A. No, I did not know.

Q. Did you know whether Iovine was on the job or off the job at any particular place? A. I did not know.

Q. Did you ever speak to Mr. Iovine? A. No, I did not.

Q. To the best of your knowledge did any other officers or agents or representatives of Local 3 ever speak to Mr. Iovine? A. To my knowledge no.

Q. To the best of your knowledge did any officer, agent or representative ever speak to any officer, agent or representative of

the board of education with respect to any job of Iovine directly or indirectly? A. To my knowledge nobody did.

Q. You attended a union meeting at which Mr. Thomas Van Arsdale presided, did you not? A. Yes.

Q. Where mention was made of the walkout? A. Yes.

Q. When was that meeting? A. It was in August or July. There were two meetings. One was in July and one in August.

JUDGE PLAINE: Meeting with whom?

368 THE WITNESS: Membership meeting of Local Union No. 3 electricians.

Q. What did Mr. Van Arsdale say concerning the board of education situation? A. Well, he described the problems of job security for the men, that men who worked on board of education jobs for many years were not afforded the assurances of going back to work on these jobs; that many of these men have developed special skills on board of education job, and they no longer can utilize these special skills on board of education jobs because there were limited job opportunities.

Also that men have come to him as well as other people have told him the men wanted to continue work on the school jobs and he supports their request to withhold their labor on the school jobs.

Q. Did Mr. Van Arsdale at any time say at either of these meetings that he was looking to put additional electricians who were not or who had not been steadily employed at board of education jobs on those jobs? A. No, he never said that.

Q. Did Mr. Van Arsdale ever indicate any intent to take away any jobs that had not been previously performed by Local 3 members or other members represented by Local 3 and give them to Local 3?

MR. BABISKIN: This witness is not competent to testify
369 what Mr. Van Arsdale attempted.

MR. ROTHFELD: What he said.

MR. BABISKIN: You didn't ask that. What his intent was is not proper.

MR. ROTHFELD: I thought I said indicated. I'm sorry.

Q. Did Mr. Van Arsdale ever say that he wanted to take away any jobs that were done by other people and give them to Local 3 members or persons represented by Local 3? A. No.

Q. Did you ever ask any representative of the board of education not to give any work to any contractors for the reason that his men were represented by Local 363 as distinguished from other reasons? A. No.

Q. With respect to the meeting of October 19, 1974 you attended that meeting. A. Yes, I did.

MR. ROTHFELD: Last week that your Honor insisted on putting in the record --

JUDGE PLAINE: Cut it out!

I didn't insist on it.

I must say, Counsel, your characterizations are of what takes place here, really undignified. I really think that.

370 MR. ROTHFELD: Your Honor justice sometimes is little different from dignity.

Q. Did you bring employees of Wickham Electric to testify at that meeting? A. Yes, they were there.

Q. What did they testify about? A. They testified on kickbacks that they had to give back on state jobs.

They testified they worked on city and state jobs and had not received the prevailing wage that is specified by Labor Law Section 220.

Q. To whom did they give these kickbacks? A. They gave these kickbacks -- well, there were several types of kickbacks. One was to a secretary of Wickham where this man had to -- this man attended, visited the office and gave a check made out -- they gave him a check made out for $125.

JUDGE PLAINE: Are you telling us what you know is a fact or are you telling us what the man testified to?

THE WITNESS: The man testified to them and we have affidavits to that that are now at the district attorney's office, Your Honor.

These men testified to this and I am just repeating what the men testified to. It is on the record at the board of education.

Q. Do you know for a fact that these men who testified
371 are employees of Wickham out on strike? A. Yes, they are.

Q. Did you also talk about, at this meeting of last week, about the deregistration proceedings involving the apprenticeship training program covering Wickham's employees, among others? A. Yes, that was mentioned at the board of education hearing.

MR. ROTHFELD: I'm sorry, I don't have any copies.

MR. FISH: I have seen it.

Do you want to introduce it?

MR. ROTHFELD: Yes, mark this, please Respondent's Exhibit 3.

(Document marked Respondent's Exhibit 3 for identification, of this date.)

MR. FISH: Please describe for the record what it is.

MR. ROTHFELD: Just a minute.

Q. Mr. Rosenberg, I show you a five-page document entitled In the Matter of Deregistration of the Apprenticeship Program,

Notice of Proposed Deregistration, State of New York, Department of Labor signed Louis L. Levine, Industrial Commissioner, dated June 17, 1974.

Is this the proceeding concerning which you told the board of education? A. Yes, it is.

372 MR. ROTHFELD: I offer it in evidence.

MR. BABISKIN: I object to the following grounds:

The witness has testified as to what he said and various people said and this document is of no relevance whatsoever. All it is, from the bare face of it is that somebody in the State of New York's administrative machinery sometime in the future may or may not do something with regard to Local 363 and some others pursuant to other sections of other laws not relevant to this proceeding.

I just think this witness has testified what he did say or did not say and I believe Mr. Monserrat and Mr. McLaren testified as to what did or did not occur at that meeting.

I feel this is not necessary in evidence.

MR. ROTHFELD: May I be heard, Your Honor?

JUDGE PLAINE: Yes.

MR. ROTHFELD: You recall yesterday's testimony in which it was testified that Mr. McLaren told Mr. Biele he was not complying with proper apprenticeship standards.

That statement is unsupported by any document.

One issue of fact is whether in fact Mr. McLaren could probably have issued a notice of termination of employment based upon a failure to or alleged failure comply with the apprenticeship standards.

373 This document indicates there there were certain findings of fact by the State of New York Department of Labor to that effect and which tend to support what Mr. McLaren said to Mr. Biele.

Now, whether or not these findings set forth in this document will ultimately be upheld on appeal as just defined deregistration which would then prevent Wickham for a certain period of time from bidding on further board of education contracts is a question.

But this document would indicate that there was some rational basis, some rational nexus between what Mr. McLaren said and what the facts may ultimately be proven to be, by a court of last resort if necessary.

JUDGE PLAINE: Do you have any comment, Mr. Fish?

MR. FISH: No, I don't have any objection to the document. I don't think it really proves very much but at the same time I will let it go in.

JUDGE PLAINE: Let him make his argument.

MR. FISH: Yes, that would be my position.

JUDGE PLAINE: I will admit it as R-3.

(Respondent's Exhibit 3 for identification received in evidence.)

MR. ROTHFELD: Your witness.

CROSS EXAMINATION

374 Q. (By Mr. Fish) You testified there is supervision by board of education officials on the job sites; is that what you testified? A. Yes.

Q. How frequently are they there? A. They are there in the form of inspectors. They tell the men what is installed properly and what is not installed properly.

They tell the super, the foreman of the job if there are any installations that were not according to specifications, and they tell -- then the contractor is then responsible to make the correction.

Q. Do they talk to the employees or do they supervise the employees or do they have their discussions with the foremen or the supervisors? A. They speak with the foremen and on occasions the men on the job recognize these inspectors because the board of education like all other city agencies do not have the proper amount of inspectors in the field so they get to know each other over the course of time.

Q. But during the normal course of their responsibilities is it not a fact that the board of education inspectors deal with the supervisors on the job rather than the employees? A. Primarily the foremen, yes.

375 MR. ROTHFELD: Objection. I object to Mr. Fish's question in that he used the term supervisor.

Now, supervisor is a word of art in this act and the witness talked about foremen and not supervisors.

JUDGE PLAINE: Are you suggesting that these contractors who deal with the board don't have supervisors on the job, even in the board sense, in a statutory sense?

MR. ROTHFELD: Judge, the question was with whom these board of education inspectors spoke.

JUDGE PLAINE: Right.

MR. ROTHFELD: And instructed and the witness testified that they spoke to foremen and instructed foremen primarily.

Now, Mr. Fish changed the word foremen into the word supervisors. Since supervisor is a word of art under the act I object to Mr. Fish's question in that there was no testimony that the instructions were through supervisors but through foremen.

JUDGE PLAINE: I am asking you now, are you going to contend that these electrical contractors do not have their own supervisors in the statutory sense on the job?

MR. ROTHFELD: Your Honor, the electrical contractors have subforemen and they have general foremen and they have job superintendents and there are supervisors somewhere along the line but the question at issue is to whom do the board of
376 education inspectors give instructions, and the witness did not testify that instructions were given to supervisors, quote, unquote.

So counsel for the general counsel is changing the testimony a bit. I don't know how relevant but he is changing it.

JUDGE PLAINF: Go ahead.

Q. You testified also, Mr. Rosenberg, concerning the fact that the employees of the various contractors who engaged in work stoppages did not have or, pardon me, Local 3 did not have a collective bargaining agreement with these contractors at the time of the walkout, is that correct? A. Yes, sir.

Q. Were there also other employees of Local 3 working on other job sites other than board of education work who also did not have a contract with contractors?

MR. ROTHFELD: You mean members of Local 3.

MR. FISH: Members of Local 3.

A. Yes.

Q. They also did not have a contract? A. Yes.

Q. Did these employees engage in any work stoppages at all? A. No, they did not.

377 Q. Even though they did not have a contract they continued to work? A. Yes, they did.

Q. You also testified about the meeting at which Mr. Van Arsdale was present, the union meeting at which the work stoppage was authorized by the union? A. Yes.

Q. Correct? A. Yes.

Q. Let us go into this in a little bit more detail.

Will you tell us about how many members were present at that meeting? A. At that meeting?

Q. Yes. A. I could say about 1,500 members, 2,000 members.

Q. Can you tell us again what Mr. Van Arsdale said about the possibility of the work stoppage? A. Well, he felt the men who worked on board of education jobs weren't assured of job security.

Q. Let me stop you right there.

Was there any discussion of why it was that these men were not assured of job security by Mr. Van Arsdale or by some of the members? A. Yes.

Q. Will you tell us about that, please? A. Yes. He indicated that there weren't that many jobs now being awarded by the
378 board of education to contractors of Local 3 and the men.

Q. There were that many what? A. Jobs now being awarded to contractors who have agreements with Local 3.

Q. Why was that, Mr. Rosenberg? A. Well, various reasons. One of course is the economics and two of course, other contractors who aren't -- do not have agreements with Local 3 are being awarded these jobs.

Q. In more frequency than they had been in the past; is that correct? A. I would say a little more frequency, yes.

Q. And were there any specific names of any contractors brought up at this meeting? Did anyone say this contractor had been awarded work or another contractor had been awarded work?
A. No.

Q. Do you remember any specific names? A. No, I don't remember any names.

Q. But it was mentioned? A. Other contractors who do not have agreements with Local 3 were being awarded work.

Q. That Local 3 had received in the past? A. Yes.

379 Q. Continue, please. A. He then outlined a tentative proposal that he was making to the city and the board of education where he indicated that in order to assure the men of Local 3 have some job security he would propose a plan, a rotating plan to the board of education especially as well as the city, that a layoff list be established and on this list all members, all men who worked on school jobs, journeymen or apprentices of Local 3 or 363 or non-affiliated electrician, these names would be placed on this list and as any contractor is awarded a job regardless of union affiliation, these contractors then would choose men or men would be sent to this contractor on a first come, first served basis.

As the man is laid off his name would appear on the list and the first man on the list would be the first man out and the second man and so on.

So it could be possible that there would be contractors who have agreements with Local 3 would have men working for them who are members of Local 3, who are members of 363 or no union.

It would be possible that contractors who were affiliated with 363 or a contractor that has no union affiliation would have the same composite workers.

He felt the men have indicated they wanted to, you know, continue to work on schools, that their security was being threatened

380 and there was talk of a work stoppage of the board of education by the men and he approved that work stoppage saying the men indicated that being we have no contract he can see no reason why.

Q. Being that you have no contract? A. Yes, we had no contract at that time.

Q. What were the reasons the men gave wanting to engage in this work stoppage? A. I visited many --

Q. At the meeting now. A. At the meeting. I spoke to several of the men, many of the men at the meeting and they also indicated to me that their job security was being threatened.

Q. Their job security? A. Their job security was being threatened, that they were no longer able to work on these schools and some told me they worked on the schools for 10, 12 years.

Q. Why was their job security being threatened, Mr. Rosenberg? A. Well, they developed certain expertise on schools and school installation basically is a -- in my judgment and opinion it is a sophisticated installation with many electrical systems are installed and these men working on these schools develop this expertise and they wanted to continue to work on these schools.

Q. I understand they wanted to continue to work on these
381 schools and isn't it a fact, Mr. Rosenberg, that the job security being threatened was because the board of education had more frequently begun to assign electrical contracting work to non-Local 3 contractors; is that not correct? A. Yes, but we had no objection to that, you know, as long as the job security provision is implemented by the board of education.

Q. We are talking about the employees now who were at this meeting and they were talking about the fact that the job security was being threatened, and isn't it a fact, Mr. Rosenberg, that the reason their job security is being threatened is the fact that the board of education has been in greater frequency than it had in the past been assigning electrical contracting work to non-local 3 contractors, thereby depriving them of the work that they had done in the past?

MR. ROTHFELD: Objection, if Your Honor please. Why people feel threatened is a state of mind which I believe Your Honor has not seen fit to elicit about states of mind as to the facts.

The witness is not an expert on the economic situation except he knows about it in general.

JUDGE PLAINE: This is in the realm of discussion. The witness claimed he had discussions with the men.

382 MR. ROTHFELD: With the men and the issue is --

JUDGE PLAINE: The question counsel is trying to get at is what was it they said was threatening them.

MR. ROTHFELD: All right.

If Your Honor please what is relevant is the position of the union and not position of individuals.

JUDGE PLAINE: We are back into the area of how the employees made known to Mr. Van Arsdale or to others presiding at the meeting that they had this problem and the question is what was it that they thought, what was it that they said was threatening them.

MR. ROTHFELD: All right.

JUDGE PLAINE: Can you answer the question?

THE WITNESS: Yes.

They would not be working on jobs, board of education jobs as they did in the past.

MR. FISH: Nothing further.

JUDGE PLAINE: Any further questions of this witness?

MR. ROTHFELD: Redirect.

REDIRECT EXAMINATION

Q. (By Mr. Rothfeld) Mr. Rosenberg, has Mr. Van Arsdale indicated with specific y what the proposed rotating layoff plan should consist of and did he say who should make those decisions?

JUDGE PLAINE: Are you talking about at the meeting?

383 MR. ROTHFELD: At any time. During the months of July and August.

JUDGE PLAINE: To whom? Let us be very specific now. We are no longer in the general area. We are now narrowing this down to something very close.

Q. Did you, Mr. Rosenberg, attend any meetings at which Mr. Van Arsdale spoke with any representatives of the board of education? A. No, I did not.

Q. Did Mr. Van Arsdale say to you what position he was taking with respect to who should frame and implement this layoff plan? A. Mr. Van Arsdale mentioned to me he gave this plan, this proposed plan to a Mr. Buxbaum from the corporate counsel and Mr. Buxbaum would then try to develop such a plan.

As of this date our union has not heard anything from Mr. Buxbaum.

MR. FISH: I will object and move to strike that entire answer.

JUDGE PLAINE: Yes, I don't think that what hasn't happened is --

MR. ROTHFELD: You are striking only what hasn't happened, Your Honor, or the entire answer?

384 MR. FISH: I am also objecting to his testimony as to what Mr. Van Arsdale told him what he did with respect to Mr. Buxbaum.

JUDGE PLAINE: Why can't we confine it to what he was told by Mr. Van Arsdale in response to your question?

MR. ROTHFELD: He did answer it. He was putting in in Mr. Buxbaum's hands. This was the answer and unfortunately I feel impelled not to subpoena First Deputy Corporation Counsel Buxbaum. He is after all an attorney among other things, a very distinguished attorney and I don't like subpoenaing attorneys, so I am doing it the best I can under the circumstances.

JUDGE PLAINE: Anything further?

MR. BABISKIN: I have several questions.

CROSS EXAMINATION

Q. (By Mr. Babiskin) Mr. Rosenberg, is it fair to state the following, that someone who wants to be an electrician will go to some sort of school doing, to learn how to do that; is that correct, an apprenticeship arrangement? A. Being tnat you introduced it, sir --

Q. No, very briefly is that fair to state?

MR. ROTHFELD: I think we are going to object to the irrelevancies, Judge.

385 MR. BABISKIN: It will be very short.

Q. Is this a fair statement, Mr. Rosenberg, that someone who wants to be an electrician will go to school for a certain amount of time and learn the electrical trade? A. Yes.

Q. Then he will emerge from that school qualified to do electrical work? A. Yes.

Q. All kinds of electrical work? A. Generally he would be a journeyman, a qualified journeyman, yes.

Q. To do various types of electrical work? A. Yes.

MR. BABISKIN: Thank you, no further questions.

JUDGE PLAINE: Is that it?

MR. ROTHFELD: Yes.

JUDGE PLAINE: Thank you, Mr. Rosenberg.

(Witness excused.)

MR. ROTHFELD: Your Honor, I now have no further witnesses except those four other persons subpoenaed who, while they are not here I am confident are a few minutes away from here.

I believe they are not here because your Honor has made either a tentative ruling or a definite ruling, I'm not sure which.

386 JUDGE PLAINE: I made a definite ruling. I quashed the subpoena.

I will say in response to your request if any of the testimony, direct testimony of your principals would disclose that the other members of the board might have been involved in discussions with them that were not repetitive of what we already have I might reconsider, but there is nothing of that kind that has come in yet.

You have the privilege of calling other principals if you choose but if this is the end of your case why, I am not going to reconsider my ruling quashing the subpoena.

MR. ROTHFELD: Judge, I don't regard it as the end of my case because of those four individuals.

But Your Honor having quashed the subpoena I have no alternative but to declare it the end of my case because those were my four other witnesses.

JUDGE PLAINE: I take it you don't have any intention of calling Mr. Van Arsdale.

MR. ROTHFELD: I do not, Your Honor, because I respectfully submit that the testimony of these four members of the board of education would probably be given almost conclusive weight by the board and probably by the tryer of the facts whereas the testimony of Mr. Van Arsdale might not be and for that reason I deem it

387 important evidence on which I would wish to rely which would be the evidence which I would wish to adduce as admissions from these four other members of the charging party, admissions perhaps against interest but admissions.

I don't think Mr. Van Arsdale could give that kind of testimony which would provide that kind of weight to our case.

JUDGE PLAINE: Is there any further testimony by the defense or do you choose to rest?

MR. ROTHFELD: I rest. I don't choose to rest, I rest because I have no alternative because of the motion to quash having been granted.

JUDGE PLAINE: In any event you rest.

* * * * *

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
29th REGION

* *

In the Matter of:

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

and

WICKHAM CONTRACTING CO., INC.

* Case No. 29-CB-1992

* *

16 Court Street,
Brooklyn, New York
March 5, 1975

The above entitled matter came on for hearing, pursuant to Notice at 10:15 A.M.

BEFORE:

ANNE F. SCHIEZINGER, Administrative Law Judge

APPEARANCES:

STEPHEN E. APPELL, ESQ.,
16 Court Street, Brooklyn, New York, appearing on behalf of the General Counsel.

N. GEORGE TURCHIN, ESQ.,
253 Broadway, New York, New York, appearing on behalf of the Employer, Charging Party.

NORMAN ROTHFELD, ESQ.,
Menagh, Trainor & Rothfeld, 130 East 40th Street, New York, New York, appearing on behalf of the Union, Respondent.

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* * * * *

JUDGE SCHLEZINGER: Will Counsel and other representatives for the parties please state their appearances for the record?

MR. APPELL: For the General Counsel, Steven E. Appell, N.L.R.B., 16 Court Street, Brooklyn, New York.

MR. TURCHIN: For the Charging Party, N. George Turchin, 253 Broadway, New York, New York.

MR. ROTHFELD: For the Respondent, Norman Rothfeld, Menach, Trainor & Rothfeld, 130 East 40th Street, New York City.

* * * * *

MR. APPELL: Your Honor, at this time, I should like to call Mr. Anthony Biele to the stand.

Whereupon,

ANTHONY BIELE

called as a witness, was duly sworn and testified as follows:

JUDGE SCHLEZINGER: Be seated.

Give the reporter your full name and address.

THE WITNESS: Anthony Biele.

16 I reside at Pleasant Drive, Brewster, New York.

DIRECT EXAMINATION

Q. (By Mr. Appell) Mr. Biele, what is your title? A. I am the President of the Wickham Contracting Co., Inc.

Q. How long have you been president? A. Approximately seven years.

Q. Is Wickham a corporation? A. Yes, it is.

Q. Where is it incorporated? A. In the State of New York.

Q. Where is the principal office, the place of business of Wickham? A. 415 Fifth Avenue, Pelham, New York.

Q. What is the business of Wickham? A. We do mostly electrical contracting.

Q. In what industry is that? A. Construction.

* * * * *

18 Q. Now, is Wickham a member of any Employer Association? A. Yes, it is.

Q. What Association is that? A. United Construction Contractors Association.

Q. How long has Wickham been a member of that Association? A. The entire length of time that the corporation was in existence.

Q. Has Wicknam always been a member in good standing? A. Yes, it has.

Q. Do you pay regular dues? A. Yes.

Q. Do you attend meetings of this Association? A. Yes, I do.

Q. Is this Association -- Has this Association ever engaged in collective bargaining on your behalf? A. Yes.

Q. With respect to which employees is that? A. Our electrical workers, the people who work for us.

Q. And is Wickham covered by any collective bargaining agreement, or has it been covered by any collective bargaining agreement to which the Association is a party? A. Yes.

With Local 363, International Brotherhood of Teamsters.

Q. Do you have any individual collective bargaining agreement with any Union? A. No, I don't.

Q. About how many electricians are on your payroll?

A. What period of time are we talking about?

Q. Let's say, as of the summer of 1974, and the fall of 1974.

What's the normal number of electricians? A. I would say roughly, between 35 and 40.

Q. Have they all been covered by this contract between the Association and Local 363? A. Yes.

Q. Now, did there come a time when Wickham engaged in a contract to perform electrical work for Downstate Medical Center?

A. Yes.

Q. When was that? A. I believe it was early 1973 we started work there.

Q. What was Wickham contracted to do? A. Electrical work.

Q. At what location? A. It was Downstate Medical Center, at 450 Clarkson Avenue, in Brooklyn.

For the State University Construction Fund.

Q. For the what? A. State University Construction Fund.

Q. Is it correct, by the way, that Downstate Medical Center is a New York State institution? A. Yes, it is.

Q. Did you -- Did there come a time when you began working at this Downstate Medical Center job? A. Yes.

January of '73, I believe. Approximately.

Q. Is that work still on at this time? A. Yes, it is.

Q. Did there come a time when you engaged to perform work at Kings County Hospital? A. As a joint venture, yes, with Ralph Perone.

Q. With whom is that joint venture? A. Ralph Perone.

Q. Did there come a time when you entered into a contract, the two of you, as a joint venture, with the City of New York, to do work for Kings County Hospital? A. Yes.

21 Q. Where is Kings County Hospital located? A. At, I believe it's 451 Clarkson Avenue, right across the street from Downstate Medical Center.

Q. What did that contract involve, doing what? A. Electrical work.

Q. Did there come a time when you began performing that work at Kings County Hospital? A. Yes, in July of 1974.

Q. Is that work still going on? A. Yes, it is.

Q. Now, at Downstate, who actually employs the electricians that are employed there? A. Ralph Perone, Licensed Electrical Contractor.

Q. Okay. A. I'm sorry, I misunderstood that.

We were on the Kings County, went to Downstate Medical Center.

The employees down at Downstate Medical Center are employed by Wickham Contracting Corporation, Inc.

Q. At Kings County, who are they employed by? A. Ralph Perone, Licensed Electrical Contractor.

Q. Okay. A. I'm sorry, I misunderstood that.

We were on the Kings County, went to Downstate Medical Center.

The employees down at Downstate Medical Center are employed by Wickham Contracting Corporation, Inc.

Q. At Kings County, who are they employed by? A. Ralph Perone, Licensed Electrical Contractor.

Q. What is your role with Kings County, then, if your employees are not there? A. I'm a joint ventur partner.

We provide funds, money, bonding capital.

22 That's one of the --

That's the basic reason.

Q. Now, did there come a time when you had a meeting with Mr. Bernard Rosenberg? A. Yes.

Q. Who is Mr. Rosenberg, to your knowledge? A. He's a business representative for Local 3.

Q. Is that from the International Brotherhood of Electrical Workers? A. Yes, that is.

Q. Do you remember when you met with him and he met with you? A. Yes.

About July 24th, 1974.

Q. Had you ever met with him before then?

Did you know who he was? A. Yes, I did.

Q. When you met with him on July 24th, where did you meet with him? A. At a restaurant, the Villa Manera.

Q. Villa -- A. Manera; in the Bronx.

Q. Was anyone else present? A. Not at our table.

23 Q. What did Mr. Rosenberg say to you and what did you say to him? A. I was interested in knowing why we were thrown off the school jobs.

Q. What school jobs were they? A. We were doing work for the Board of Education.

Q. In the City of New York? A. Yes.

And we received a notice on July 22nd, that we can no longer perform any work at the sites, something to do with the labor, I don't remember the exact wording of the letter.

And I wanted to know why we were thrown off.

JUDGE SCHLEZINGER: Not what you wanted to know, but what was said.

THE WITNESS: I'm sorry.

He said, now that you're --

Q. What did you say to him?

You said, I wanted to know.

Did you say this, or is this what was just in your mind?
A. This was in my mind.

Q. We want to know what you said to him, and what he said to you, at that meeting? A. Okay.

24 At that meeting, he said, he can provide a good force of men to complete my work at these particular school jobs, namely, P.S. 8, P.S. 41, Samuel Gompers High School, Tremont Early Childhood Center.

Q. Tremont Early Childhood Center? A. Yes.

JUDGE SCHIEZINGER: Is that the first thing that was said in this conversation?

THE WITNESS: No.

There was about an hour of procrastination.

He was very cautious, he said he has a good pool of men, he trains his Local 3 men very well.

He tried to sell me on a bill of goods about joining Local 3, having my shop join Local 3.

I had told him that we belong to an Association, and my men are members of Local 363, and I couldn't make that decision for them.

Q. Do you recall anything else Mr. Rosenberg said in this meeting? A. He said, he would provide a good -- he would provide me the men, a good crew of men, to complete my work, at those particular schools, was what I heard him say.

JUDGE SCHIEZINGER: Whom had asked for this meeting?

25 THE WITNESS: Bernard Rosenberg had called up my office. I was out.

Then he called up again and I answered the phone, and he wanted to have a meeting at another restaurant, and then I happened to choose this restaurant.

He requested the meeting.

Q. Do you recall anything else he said at the meeting? A. He wanted me to sign a contract with Local 3.

Q. He said that? A. Yes.

He said he wanted me to sign a contract with Local 3.

I would get fair treatment if I joined, if my company signed a contract with Local 3.

Q. What did you say to him? A. I had already told him that I was a member of an Association, and my men choose to be with Local 363.

Q. By the way, what time of the day did this meeting take place, do you recall? A. It was scheduled for five --

It took place at 5:30 P.M.

Q. Now, do you recall a time when an election was held by the Labor Board? A. Yes.

26 Q. Did your employees vote in that? A. Yes.

Q. Do you remember when that was, about? A. I believe it was September 19th, 1974.

Q. Did there come a time --

Strike that.

Did there come a time when Local 3 picketed in front of your premises in Pelham? A. Yes.

Q. Do you remember when that began? A. It was early October of 1974.

Q. Do you remember about how long after the election it was that you first saw pickets? A. A week, a week and a half.

Q. Okay. A. Approximate.

I just don't remember exact dates.

Q. What did the picket signs say that you saw? A. Employees of Wickham on strike, Local 3, I.B.E.W.

Q. Were any of the pickets --

How many pickets did you see the first day? A. I --

Q. If you remember. A. Most of the picketing done in front of my place, there was approximately ten pickets.

27 There was one day, and I don't remember the exact day, where there were about three or four hundred pickets.

Q. Where were they? A. In front of my office building.

I just don't remember the day they were there.

My telephone lines were cut, there was about three or four hundred, maybe five hundred people.

MR. ROTHFELD: Move to strike about the telephone lines cut.

JUDGE SCHIEZINGER: You don't know who cut them?

THE WITNESS: I didn't say that.

I'm just trying to remember the occurrences that happened at that time. No, I don't.

JUDGE SCHIEZINGER: The motion to strike is denied, but it will be evaluated on the basis of no showing of who cut the wires.

Q. (By Mr. Appell) Now, --

JUDGE SCHIEZINGER: Do you remember how long after this picketing began that that occurred?

That there was this very large number of pickets?

THE WITNESS: At this time, I don't recall.

I do have a record in my office, I marked it down, but I can't remember.

28 JUDGE SCHIEZINGER. You don't know whether it was a week after the picketing began, or a month after or --

THE WITNESS: Pickets began to show up at my job site in about -- rather, at my office, about -- about a week or two weeks after the election.

Now, whether that was the time when the large group showed up, I just don't remember at this time.

JUDGE SCHIEZINGER: Proceed.

Q. (By Mr. Appell) How many days did this large group show up? A. Pardon?

Q. How many days did the large group show up? A. One day.

Q. When that picketing began at your office, for how long did it go on at that time? A. Until approximately -- it was approximately a week to ten days.

It ended approximately October 6th or 50th or somewheres.

Q. Did you see any other picket signs at that time, besides the ones you said you saw? A. I --

Q. At that time? A. At that time, no.

No.

29 Q. At what time were these pickets present, during that round of picketing? A. Approximately, 10:00 to 4:00, and they didn't show up on rainy days, when it was foul weather.

Q. Were any of your employees on strike during that time? A. No, they weren't.

Q. Do you know who any of these pickets were, personally? A. No.

Q. Now, -- A. On the very first day, I just recognized one or two of the pickets that worked for Ralph Perone, a man named Pete Vallo, was there.

Q. Pete who? A. Vallo.

I don't remember the names of all the members.

I happened to recognize Pete Vallo.

There was people who had take -- who were taking pictures, and he remained there for half a day.

But, from then on, I didn't recognize any of the people picketing in front of my place.

Q. Did there come a time when you took part in a meeting with Mr. Thomas Van Arsdale? A. Yes.

30 Q. Do you know who he is? A. He's the business manager of Local 3.

Q. When did you have this meeting with Mr. Van Arsdale? A. October 7th, 1974.

Q. Who else was present? A. My brother, Albert Biele, and Ralph Perone.

Q. Where did that meeting take place? A. At the Golden Chariot in Queens, restaurant.

Q. Golden Chariot Restaurant? A. Yes.

Q. At what time was that? A. I believe it was between 12:30 and one o'clock, or about 12:30, I think it was.

Q. How did that meeting -- A. In the afternoon.

Q. How did that meeting come about? A. One of the pickets in front of my place of business came upstairs and negotiated a meeting.

Q. With whom? A. I --

Q. You said, negotiated a meeting. A. They came to me and they wanted to get together and talk about something, you know, if I wanted to meet with Mr. Van Arsdale.

31 Q. What did you say? A. I don't remember the whole conversation.

I said, yes, I wanted to know what was going on.

Q. How long before October 7th did that meeting take place, with the pickets, when they came up to you? A. They said, if we went to the meeting, that they would stop the picketing in good faith.

That would stop the picketing.

They did, they stopped the picketing.

MR. ROTHFELD: Move to strike, "they."

THE WITNESS: The man that I spoke to said that Local 3 would stop the picketing in good faith, if I went to this meeting.

JUDGE SCHIEZINGER: In good faith is something that the picket said?

THE WITNESS: The leader of the pickets, I think his name was Walter, but I don't remember for sure.

He was on the picket line.

I recognized him as a man picketing in front of my place, taking the names and addresses of the pickets that showed up.

JUDGE SCHIEZINGER: What you're quoting is what he said?

THE WITNESS: Yes.

32 He said that they would stop if I went to this meeting, they would stop in good faith.

Q. How long before you actually met with Mr. Van Arsdale, which you said was October 7th, how long before that did you have this talk with these pickets?

Was it the same day? A. No.

I think it was on a Friday, and the meeting was going to be set up, I believe, for a Monday, and it was postponed until a Tuesday or a Wednesday.

Q. I see. A. It was setting up the meeting.

I don't know --

Q. Now, at that meeting, what did Mr. Van Arsdale say, what did you say, what did your brother say?

Albert Biele is your brother? A. Yes.

Q. What's his title? A. He's the Secretary of the Wickham Contracting Co.

Q. Okay.

What did each of you say, what did Mr. Perone say, as best you can remember? A. I think, for the -- for the first ten or fifteen minutes, nothing much was said at all. Just a greeting.

I remember him saying, now that we have all your men, I guess you're ready to join Local 3.

33 Implying that my men quit Wickham and went over to him, went over to Local 3.

And I said, that wasn't so. We only lost about three men, I believe, that quit us, and apparently joined Local 3.

JUDGE SCHLEZINGER: Don't tell us what he implied, only what he said.

THE WITNESS: Okay.

He said, it would be a good idea to join Local 3, he had a good pool of men, and he gave me a sales pitch of Local 3, its organization, and how it trains its men.

I told him that I was a member of an Association, and there was a vote being evaluated by the N.L.R.B. with my employees, and it wasn't up to me to make this decision, again.

Q. What else did Mr. Van Arsdale say, if you can remember?

A. I said, I couldn't join, and I wouldn't --

I couldn't join with him anyway, I belong to an Association, he was aware of this, I belonged to United Construction Contractors Association, and he said I could join his organization, by quitting the United Construction Contractors Association, and having my men vote again in order to go into Local 3.

34 Q. Do you remember anything else Mr. Van Arsdale said?

A. We were there for approximately two hours.

I just can't remember everything at this time.

Q. Do you remember anything about a contract being mentioned?

A. Yes.

He says, we would like to have you sign a contract with Local 3.

Q. What did you say to that? A. I had already told him that I'm a member of the United Construction Contractors Association, and they bargain for us, and that's when he said that you can fix that up by quitting the Association, withdrawing from the Association, and having another vote.

Q. Was anything agreed to at that meeting? A. No, it wasn't.

Q. Did there come a time that picketing began again?

A. Yes.

I'm just trying to think when.

Yes, there was.

Q. When was that? A. I believe in my office building, they resumed picketing at, I think it was anywheres from two weeks to four weeks afterwards, at my office building.

35 And they resumed at a -- commenced picketing at job sites, I believe that was December 3rd, 1974, a large number of pickets showed up at Downstate Medical Center and Kings County Hospital.

Q. When the picketing resumed at your office, how often did that take place thereafter? A. It is still going on.

Q. Was it every day, every other day? A. Every day except on holidays and when it rained or foul weather.

Q. From what time until what time are those pickets generally there? A. They're there every morning at ten o'clock, and they leave every afternoon at two o'clock.

Approximately ten pickets are there every day.

Q. What do the picket signs say, which are used at your office in Pelham? A. One picket sign says, "Employees of Wickham on strike, Local 3, I.B.E.W."

Another picket -- Other picket signs says, "Employees of Wickham-Perone on strike, Local 3, I.B.E.W.

Q. Any others? A. I'm sorry, it also says, for recognition -- for recognition and decent wages.

Q. Is there anything else on it?

36 You say, for recognition and decent wages.

Is there anything else on that sign? A. Local 3, I.B.E.W. International Brotherhood of Electrical Workers.

Then it gives the address of Jewel Avenue, as being the address of Local 3.

Q. Does that sign begin, for recognition and decent wages? A. No.

It started, employees of Wickham and Perone on strike for recognition and decent wages, Local 3, I.B.E.W., and then it gives the address of Jewel Avenue, in Queens.

Q. Have you seen the picketing at the Downstate location?

A. Yes, I have.

Q. Have you seen the picketing at the Kings County location?

A. Yes, I have.

Q. Is the picketing still going on at each of those locations?

A. Yes.

Q. And have you seen the picket signs at those locations?

A. Yes.

37 Q. What do they say at those locations? A. Employees of Wickham and Perone on strike for recognition and decent wages, Local 3, I.B.E.W., International Brotherhood of Electrical Workers, and it gives the address of Jewel Avenue.

Q. Where have you actually seen the pickets located at the Kings County Hospital site? A. At the entrance to Building B, which is the building we're working in.

Q. Where have you seen them at the Downstate Medical Center? A. At the entrance to the Downstate Medical Center. The main entrance.

Q. By the way, are any of your employees on strike at this time? A. No, they are not.

MR. APPELL: I have no further questions, Your Honor. Thank you.

JUDGE SCHLEZINGER: Any questions by the Charging Party?

EXAMINATION

Q. (By Mr. Turchin) Would you explain why certain contracts are entered into as a joint venture with Ralph Perone, rather than

38 alone by Wickham Contracting Co., Inc.? A. Well, Wickham Contracting Co. does not have a license, electrical license for the City of New York, and to do work for the municipalities of the City of New York, you must have an electrical license.

It's the code or law of the City of New York.

Ralph Perone does have a electrical license.

We did joint venture only on those jobs where that license is required.

Q. Is that license required in the City of New York?

A. Only on private work, and City of New York work.

Projects owned by the City of New York.

It's not required on Federal projects and State owned buildings.

Q. These are the only projects that you bid as a joint venture with Ralph Perone? A. That's correct.

Q. Now, with reference to the wages paid on the two sites, do you pay the prevailing wage? A. Yes, I do.

Q. Is that equal or better than the Local 3 wage?

To the best of your knowledge. A. To the best of my knowledge, yes.

MR. TURCHIN: I have no further questions.

JUDGE SCHLEZINGER: Cross examine?

CROSS EXAMINATION

* * * * *

40 THE WITNESS: Repeat the question, please?

Q. In May and June of 1974, how many men did you have on your payroll, who performed electrical work? A. I --

Q. The payroll of Wickham Contracting Co., Inc. A. It would be kind of hard for me to remember.

I believe it was 40 or 40, but I don't remember exactly.

It could have been 30, it could have been 35.

It could have been 25.

I have payroll records and I'd have to refer to them to give you an exact number.

41 Q. Sir, do you recall whether last Thursday, in Region 2, the hearing in Case No. 2-RC-16244, February 27th, 1975, you testified that you had 40 or 50 men? A. The question may have been asked as to total employees.

I don't remember.

Without my records, in front of me, I'm not going to be able to remember the exact number of employees that I had at that particular time.

I really don't know.

I think I said it at that time, too.

Q. I see.

And did the number of your electrical workers then decrease to around ten, on the payroll of Wickham Contracting Co., Inc.? A. At that time, no.

Q. When did they decrease to around ten? A. Perhaps, recently, like a week ago or two weeks ago.

I would have to, again, refer to my records to find out exactly when it would have decreased to ten.

I'm not sure it did decrease to ten.

I'm only guessing at the ten figure.

JUDGE SCHLEZINGER: Please don't guess.

If you don't know, just say you don't know.

42 I take it, these records to which you refer, are not in the hearing room?

THE WITNESS: They are not, no.

MR. ROTHFELD: May I have a moment, please?

JUDGE SCHLEZINGER: Certainly.

(Whereupon, there was a short pause then in the hearing.)

JUDGE SCHLEZINGER: On the record.

Q. (By Mr. Rothfeld) Sir, you testified that your payroll went down to around ten, perhaps last week? A. I wouldn't know without my payroll records, the exact count.

I could call my bookkeeper up and find out.

JUDGE SCHLEZINGER: He also indicated, Counsel, that he was just guessing at that point.

MR. ROTHFELD: I see.

Q. (By Mr. Rothfeld) Do you remember whether your payroll went down to around ten around October of 1974? A. Oh, definitely not.

* * * * *

44 Q. Since last summer, have you received any notices of resignation from any employee, resignation from Wickham Contracting
45 Co., Inc.? A. To the best of my knowledge, only three people quit.

From those three people, I didn't get any written resignation.

Q. Who are those three people? A. Salvatore Vecchio, Michael Rosetti, and Peter Thompson.

Q. Okay. A. There was 23, I think, at the time of the vote.

I think I had 23 employees at the time of the vote.

I'm not sure.

Q. Did Salvatore Vecchio say to you, I resign? A. He came to the office and Sal said he just wanted to join Local 3.

Or Local 3 made him an offer, and he joined Local 3.

Q. Did he say, I resign?

* * * * *

46 A. He told me, he's going over to Local 3.
I don't know, he didn't use the words, I resign, or --
He said, I'm going over to Local 3.
Q. Did Michael Rosetti say to you, I quit, or I resign?
A. He didn't speak to me.
I haven't spoken to him, no.
Q. I see.
Did Peter Thompson say to you, I resign? A. There are a number of people who came to my office, picked up their paycheck and I just don't remember them all by name.
Peter Thompson I haven't seen that often, I've hardly ever seen at all.
The same with Mike Rosetti.
I wouldn't recognize him.
I just wished him well.
They came to the office and picked up their checks, and I wished them well, and they left.
JUDGE SCHLEZINGER: Do you recall what they said?
THE WITNESS: They said -- They showed me their cards with Local 3, and said they're very happy to work with Local 3,
47 and I said, fine.
I told the people I did speak to, I said, you're welcome to come back to work for us anytime.

* * * * *

49 Q. Sir, you testified that you joined the United Construction Contractors Association? A. I'm a member of the United Construction Contractors Association, yes.

Q. When did you become a member? A. Before it was a corporation, we were a partnership.

I joined at that time, and I joined, also, when I was a corporation.

I continued my membership.

Q. When did you join as a corporation? A. At the very inception.

Q. Well, -- A. Of my incorporation.

Q. About how long ago was that? A. I believe it was seven years ago.

I believe it was. I'm just trying to remember.

Q. What was the mechanics of your joining this Association? A. What do you mean by mechanics?

I paid dues, I attend meetings.

50 Q. Did you do anything else? A. I don't know what you're driving at.

I have no idea.

Q. Did you sign any piece of paper? A. I signed an agreement with --

It's been a long time ago.

Yes. I believe I did.

Q. Well, would you tell us what, if anything, you signed in connection with joining this Association?

* * * *

52 JUDGE SCHLEZINGER: Are you quarreling with the decision of the Board, as of the time of the decision?

MR. ROTHFELD: No, I'm not.

* * * * *

63 Q. (By Mr. Rothfeld) Mr. Biele, you have testified that you purchase supplies.

Do you also purchase supplies, all the supplies, for Ralph Perone?

64 MR. APPELL: Objection.

MR. TURCHIN: Objection.

JUDGE SCHLEZINGER: Well, since this pertains to this witness' activity, I will permit the question.

Q. Answer, please. A. I purchase material for the joint venture.

I buy nothing for Ralph Perone.

Q. You purchase --

Do you purchase all the materials for the joint venture?

MR. APPELL: Your Honor, I have a standing objection to this line of questioning.

JUDGE SCHLEZINGER: You may.

A. That's a good question.

Yes, we provide all the material for the joint venture.

Q. Now, when you answered the General Counsel in connection with your purchase of supplies, did you take into consideration supplies which you had purchased for the joint venture? A. Say that again?

MR. ROTHFELD: Read it back, please?

(Whereupon, the requested question was read back by the reporter.)

A. I was talking about the joint venture, supplies for the joint venture,

65 only.

Q. Yes.

Now, you have testified that your office is in Pelham?

A. Yes.

Q. Is that also the office of the joint venture? A. Yes, it is.

Q. Are employees of Ralph Perone paid in the premises of that office, in Pelham? A. I don't know.

Ralph Perone handles his own payroll.

Q. You answer is, you don't know whether or not Ralph Perone, the men on Ralph Perone's payroll, are paid in the Pelham office? A. I believe he takes the payroll to the job sites and pays them at the job sites.

Q. Is it your testimony that they are never paid in your office?

MR. TURCHIN: Objection.

Q. Or that you don't know whether or not they are paid there?

MR. TURCHIN: Objection.

I think it's been answered.

JUDGE SCHLEZINGER: Do you know?

If you don't know, say you don't know.

66 THE WITNESS: I don't know.

MR. ROTHFELD: May I have the statement?

MR. APPELL: What statement?

MR. ROTHFELD: His.

MR. APPELL: Your Honor, Counsel has asked for a statement from this witness, and let the record show that I'm handing Mr. Rothfeld a copy of a sworn statement, sworn before an N.L.R.B. Examiner on December 6th, 1974, consisting of three pages.

MR. ROTHFELD: Thank you.

Q. (By Mr. Rothfeld) During the past year, have you signed any papers in connection with the United Construction Contractors Association membership?

MR. TURCHIN: Objection.

JUDGE SCHLEZINGER: This is during the past year?

MR. ROTHFELD: Yes.

JUDGE SCHLEZINGER: Any papers connected with?

MR. ROTHFELD: Yes.

Any papers in connection with the United Construction Contractors Association membership.

JUDGE SCHLEZINGER: I'll permit the question.

Q. Answer, please. A. In the past year?

I don't remember.

67 I know I paid the dues, but I don't remember any papers that I signed.

I just don't remember.

Recently, within the last two or three months, I don't believe I have signed anything.

But beyond that, I just don't remember.

Q. During the past year, have you signed any collective bargaining agreement with any Union? A. No.

Q. You're sure about that?

MR. TURCHIN: Objection.

A. Positive.

MR. TURCHIN: Objection.

JUDGE SCHLEZINGER: The question has been asked and answered.

MR. ROTHFELD: I'm sorry, is that a ruling, Your Honor?

JUDGE SCHLEZINGER: He objected to the question, but it's already been answered.

I'm not striking it.

That's my ruling.

MR. ROTHFELD: I'm sorry, does that mean you're sustaining the objection?

JUDGE SCHLEZINGER: The answer stands on the record.

MR. ROTHFELD: Okay.

68 Q. (By Mr. Rothfeld) Now, you have a brother, Albert Biele, do you not?

MR. TURCHIN: Objection.

MR. ROTHFELD: It's a different matter, Your Honor.

MR. TURCHIN: I'll withdraw the objection.

A. Yes.

Q. Albert Biele is Secretary-Treasurer of Wickham Contracting Co., Inc.? A. He's the Secretary.

Q. I'm sorry, who's the Treasurer? A. I don't believe we have a Treasurer.

MR. TURCHIN: Objection.

JUDGE SCHLEZINGER: Just a minute.

When there's an objection, please don't answer.

This is as to Treasurer of the Charging Party, Wickham?

MR. ROTHFELD: Yes.

JUDGE SCHLEZINGER: I'll permit the question.

A. Albert Biele and myself are the only officers of Wickham Contracting Co., Inc.

Q. Well, is Albert Biele the Treasurer? A. I believe he's just the Secretary.

Q. Well, are you the Treasurer, sir?

MR. TURCHIN: Objection.

69 A. Perhaps he is Secretary-Treasurer.

He might be.

I don't know.

MR. TURCHIN: I've tried to indicate, I don't believe it's material or relevant.

Is there some question as to the authenticity of this corporation?

I don't believe that's the issue of this particular hearing.

JUDGE SCHLEZINGER: You say, there are only two officers?

THE WITNESS: That is correct.

JUDGE SCHLEZINGER: You're not sure what the titles are?

THE WITNESS: I know I'm the President.

Al Biele may be the Secretary, or the Secretary-Treasurer.

I would have to go back to the corporate papers seven years ago to find out how it was drawn up.

Q. Mr. Biele, do you know whether Albert Biele is an officer of Ralph Perone Co? A. No. He is not.

* * * * *

89 Q. * * * Did you say to Bernard Rosenberg that if you
90 signed an agreement with Local 3 at that time, that it would interfere with the progress of that lawsuit? A. I never said that.

Q. Did you say to Bernard Rosenberg that you hoped to obtain some money from the Board of Education of the City of New York? A. No.

Q. Did you say to Bernard Rosenberg that you would like Local 3 to cooperate in having the City of New York pay you some money damages? A. No. Absolutely not.

Q. All right.

You didn't mention the whole subject at all? A. I'm just thinking here.

He suggested something, that he could do something for the City of New York, for me.

Now I remember something.

He said he can do something for me, if I join Local 3. Now I remember.

That he could talk to somebody with the Board of Education to help me out if I join Local 3.

Now I remember that part.

Q. So, he brought the subject -- he brought up the subject matter of the lawsuit? A. He didn't bring up the lawsuit, no.

91 Not the lawsuit.

Q. You didn't either? A. He said he could help me out with Local 3.

What he was referring to -- with the Board of Education, and maybe get me back to work, or something along those lines.

Q. And did he tell you that he represented many of your people? A. No, he didn't tell me that, either.

Q. Did you ask him whether he represented any of your people or many of your people? A. I don't believe that came up in the conversation at all, that he represented my people.

No, he didn't say that.

He said he was going to provide my men to complete my school work.

Q. I see.

Didn't mention your --

Mr. Rosenberg did not mention your employees at all? A. Not that I can recall.

Q. All right.

Then you had a conversation in October with Thomas Van Arsdale? A. That's correct.

92 Q. And about when was that conversation? A. October 7th, 1974

Q. October 7th? A. That's correct.

Q. Where was that meeting? A. At the Golden Chariot in Queens.

Q. And did Mr. Van Arsdale mention your employees? A. He said, now that we have all your employees, perhaps you can sign a contract with -- now you'd be willing to sign a contract with us.

Q. Okay.

Now, did, in that conversation with Mr. Van Arsdale, did you mention this lawsuit of yours in the, now in the United States District Court for the Southern District of New York? A. At that time, it may have come up.

He may have asked, or brought it up, I don't -- I just don't remember. It may have come up at that time, that you're suing us for $5,000,000.00, it's a waste of time, and that if you join us, you can continue the suit while you're a member -- if you're still a contractor with Local 3, you could continue the suit with Local 3.

It was brought up in that context.

93 He assured me I could continue the suit that I presently had.

Q. Did you tell Mr. Van Arsdale that, in your opinion, if he were to sign -- if you were to sign a contract with Local Union No. 3 at that time, that would interfere with the progress of your lawsuit against the Board of Education? A. Say that again, please?

Q. Did you say to Mr. Van Arsdale, that if you were then to sign a contract with Local Union No. 3, that such signature of that collective bargaining agreement, would interfere with your -- with the progress of your lawsuit against the Board of Education of the City of New York? A. I don't remember that conversation.

Q. And did you tell Mr. Van Arsdale that you hoped to obtain a financial recovery from the Board of Education of the

City of New York? A. Yes, I may have told him that we have suffered on the Board of Education jobs.

Yes.

Q. Did you ask Mr. Van Arsdale whether or not he would cooperate with you in obtaining, in helping you obtain a settlement --

MR. TURCHIN: Again --

94 Q. (Continuing) -- in your favor, from the Board of Education of the City of New York, of that lawsuit?

MR. TURCHIN: I tried not to object, because I felt, possibly we were going somewhere, but I now object.

This is irrelevant and immaterial.

What a lawsuit that has no relevance or materiality to this issue is, I don't know.

JUDGE SCHLEZINGER: I take it, the question doesn't go to the lawsuit, but to the particular conversation.

MR. ROTHFELD: Yes.

MR. TURCHIN: I see.

JUDGE SCHLEZINGER: To what was said about it in this conversation.

Q. Answer, please. A. Can you repeat the question, please?

MR. ROTHFELD: Read it back, please?

(Whereupon, the requested question was read back by the reporter.)

A. I don't recall that conversation.

Q. Are you sure it didn't happen?

MR. TURCHIN: Objection.

MR. APPELL: Objection.

JUDGE SCHLEZINGER: Sustained.

MR. ROTHFELD: Sir, when the testimony is, I don't recall that conversation, do you mean that you don't recall whether the

95 conversation, in fact, took place? A. I never asked Mr. Van Arsdale to do anything for me.

* * * * *

98 Q. You testified that some men picketed in front of the B Building of which hospital? A. Kings County Hospital.

Q. Now, have you heard any information as to whether this picketing caused any employee of the Kings County Hospital not to report for work? A. I have heard nothing.

Q. Have you any -- Have you heard anything as to whether this picketing caused any employee of the Medical Center, the Downstate Medical Center, to report for work, or not to report to work?
A. I have heard nothing to that effect, no.

Q. Okay.

Did you, yourself, see the picketing at either location?
A. Yes, I did.

Q. Sir, I show you Page 3 of your statement -- A. At that date, I know what that statement says, at that date, I did not see the pickets.

99 However, after that date, I did see the pickets on several occasions.

Q. Sir, to clarify the record, your statement now is that, at the time you gave this statement to the General Counsel, you had not seen the picketing? A. That is correct.

Q. Okay.

Did all of your employees continue to work during this picketing?
A. Yes.

Q. And did all the employees on the Ralph Perone payroll continue to work during this picketing? A. To the best of my knowledge, yes.

Q. Now, with respect to the job at the Kings County Hospital, about how many men, electrical workers, are now at work there? A. I don't know.

At Kings County Hospital?

Q. Yes. A. How many men worked there then or now?

Q. Now. A. Perhaps, five, six.

I don't know. I don't know.

I really don't know.

Q. All right.

100 They're on the Ralph Perone payroll, are they not? A. Yes, they are.

Q. Now, sir, am I correct that on every single job that, that is supervised out of your Pelham office, which is non-governmental in nature, that job is listed for the Wickham-Perone joint venture?

MR. TURCHIN: Objection.

JUDGE SCHLEZINGER: I'll permit the question.

Q. Answer, please. A. Non-governmental?

I don't believe we do any private work.

* * * * *

102 Q. Now, I ask you to address yourself to the joint venture portion.

Am I correct that all individual -- all non-governmental work is listed as a joint venture job? A. Let me clarify what government and non-governmental is.

I don't understand what the attorney is getting at.

JUDGE SCHLEZINGER: If you don't understand the question, ask Counsel to clarify it.

THE WITNESS: Would you clarify what you mean by governmental or non-governmental?

Q. All right.

Am I correct, sir, that all electrical work managed in your Pelham office, which is not done for a government agency, and not paid for through government funds, is treated as a Wickham-Perone job for payroll purposes? A. No.

Wickham and Perone does not maintain a separate payroll.

When you refer to government, you have Federal, State and City Government.

Are you referring to all three governments?

10? Q. All three. A. The only time we have a joint venture is when we work for City Governments and within the City of New York.

That's the only time it's a joint venture.

Federal Government and State Government, within the City of New York, is solely a Wickham job.

Federal and State work beyond the City limits, is solely Wickham work.

Q. Now, sir, let's take work that is neither Federal, State or City, but private. A. Yes.

Q. Am I correct, sir, that you do not list any private work within the City of New York, under the Wickham payroll? A. That is correct.

Q. Okay.

Now, at any time since last summer, have you sent any notice of termination to any employee? A. In writing to the employee, no.

Q. All right.

Have you ever told any employee orally, since last summer, that he was fired? A. I never fired anybody, not to my knowledge.

When work got slow, we laid them off.

But I don't remember ever firing anybody.

104 Q. I see.

During tne summer of 1974, were there men on the Wickham payroll who were simultaneously on the payroll of Ralph Perone?

MR. APPELL: Objection.

JUDGE SCHLEZINGER: I'll permit the question.

Q. Answer, please. A. Simultaneously on the payroll --

Not to the best of my knowledge.

Q. I'm sorry, sir, when you say, not to the best of your knowledge, does that mean you don't know, or you know that this didn't happen? A. If a man works for me on Monday or Tuesday, and --

Let me see --

Simultaneously?

You mean -- What do you mean by simultaneously on the same payroll?

If he's working for me, Wickham, he's working for me.

He can't be working for me and doing two jobs at the same time.

Q. How about during the same week? A. It's possible.

There are times when I laid off men, and they were immediately

105 employed by Ralph Perone, and through the Union.

Q. The next day? A. I think so.

* * * * *

107 JUDGE SCHLIEZINGER: Just a minute.

Do you know when employees were laid off by Wickham, where they went to work, whether it was for Perone or for somebody else?

THE WITNESS: In some cases, I know they went to Perone.

Not all my employees that were laid off went to Perone.

They were laid off, went back to the Union.

They went to Perone, because Perone requested them from the Union.

He called up the Union, he may have known some of my men worked well with us, and when we laid them off, we sent them back to the Union, and Perone asked the Union if he could have these

108 particular me, I suppose.

This is the arrangement that Mr. Perone has with the Union.

JUDGE SCHLEZINGER: Do you know whether these employees worked at all times, either for Wickham or for Perone?

THE WITNESS: Some employees worked for Perone, he hired them directly, never worked for me.

Some employees worked for me, never worked for Perone.

Some employees work for me, and when I laid them off, I said, they worked for Perone.

Others did go to Perone through the Union.

JUDGE SCHLEZINGER: What was the question?

What was the question before the witness?

(Whereupon, the requested question was read back by the reporter.)

JUDGE SCHLEZINGER: I'll permit the question.

Q. Answer, please. A. There are several instances where men who left the Wickham payroll, went to work for Ralph Perone, and came back to the Wickham payroll.

* * * * *

111 Q. (By Mr. Rothfeld) When Mr. Rosenberg talked to you, sir, at this restaurant, did you ever ask him whether, in his conversation or requests, he was making a distinction between Wickham and Wickham-Perone, joint ventures? A. I'm not sure, I'm not positive.

I can't remember.

Q. Okay.

Now, at the time that Thomas Van Arsdale talked to you at the Golden Chariot Restaurant, did you ever ask Thomas Van Arsdale whether his requests or demands related to Wickham or to Wickham-Perone? A. He said, Wickham, definitely.

112 As a matter of fact, now that I recall, Bernard Rosenberg did say, we want Wickham to join Local 3, and he didn't mention Perone.

Q. Mr. Biele, at your meeting with Thomas Van Arsdale, Ralph Perone was there, was he not? A. Yes, he was.

Q. And did Thomas Van Arsdale say, I'm not talking about Perone, I'm talking about you? A. He did not say, I'm not talking about Perone.

He used the words, Wickham, I want Wickham to sign a contract with Local 3.

He requested Wickham, and then he said he would also like to get Ralph Perone, as well, at that meeting.

He didn't want to leave any stones unturned.

Q. I see.

Did you ask Mr. Van Arsdale whether he was talking about any particular, legal entities? A. I don't remember any legal talk with him.

I just don't remember.

Q. And did you tell Thomas Van Arsdale that you had some employees on your payroll, and other employees on Ralph Perone's payroll? A. I don't remember getting into a discussion about whose employees were on which payroll.

Let me think.

113 Q. You had no such discussion about payroll with Bernard Rosenberg, either, did you? A. I just can't remember the exact conversation, as far as Wickham.

He mentioned the words, Wickham, he mentioned the words, Perone, and he mentioned the words, Wickham-Perone.

But the sentences he used, I just don't remember right now.

Q. You don't remember how you used those terms, either, do you? A. I --

Q. In your conversation? A. Yes.

He mentioned Wickham. He wanted Wickham to join Local 3.

He used Wickham in that respect. That I remember.

Q. Sir, my question was, my last question was, did you remember how you used the terms, Wickham or Wickham-Perone, in this conversation?

JUDGE SCHLEZINGER: This, again, now is what you said, not what you had in mind.

THE WITNESS: I'm trying to think of how I would have used the term, Wickham.

Yes, I remember I used the term, Wickham, when I said we belonged to the United Construction Contractors Association, and that

114 Wickham had a -- an election pending.

Then I used the term, Wickham, the word, Wickham.

Q. You said that to him? A. To Thomas Van Arsdale.

Q. Sir, when you met Thomas Van Arsdale, hadn't the election already taken place? A. Yes.

But I said, there was something before the N.L.R.B. to determine who was going to represent the employees of the Association.

Q. I see.

And at that time, when you spoke --

I'm sorry, did I interrupt you? A. No.

Q. At that time, when you spoke to Thomas Van Arsdale, was there a collective bargaining agreement in effect covering your employees and the Teamsters?

MR. TURCHIN: Objection.

It's been answered three or four times.

I think all we're doing now is going over the same material.

JUDGE SCHLEZINGER: Would you, the reporter, read the question back, please?

115 (Whereupon, the requested question was read back by the reporter.)

JUDGE SCHLEZINGER: I'll permit the question.

A. We have -- We belong to Association, and the Association does the bargaining for us, and I do know that there was, the determination of an election pending with the N.L.R.B., and that we were employing members of 363 prior to it.

* * * * *

120 JUDGE SCHLEZINGER: I will first permit the question whether it was or was not a party to such a collective bargaining agreement.

121 This is at the time of the conversation with Van Arsdale.

A. I'm a member of the Association, and they bargain for me.

Outside of that relationship, I had no other collective bargaining agreements with anybody else.

JUDGE SCHLEZINGER: So, you had an agreement with the Teamsters, if the Association had an agreement with the Teamsters, at that time?

THE WITNESS: Yes.

* * * * *

123 JUDGE SCHLEZINGER: I will permit the question whether the witness, who has indicated he is represented by the Association for collective bargaining purposes -- which Association, at some time, had an agreement with the Teamsters -- had such an agreement, as far as the witness knows, at the time of the conversation with Van Arsdale.

THE WITNESS: I would say, yes.

We paid the men's dues to the Union, and --

Not their dues, but their benefits go to the Union, and there's an effective agreement.

Q. And were you operating under such agreement? A. Yes.

124 I complied with all the rules and regulations of the agreement between the Association and the Teamsters.

* * * * *

125 REDIRECT EXAMINATION

Q. (By Mr. Appell) Do you know when that suit that Mr. Rothfeld asked you about, was filed, that $5,000,000.00 suit?

A. I think, in late July of 1974, but I'm not positive.

126 Q. Was it before or after your meeting with Mr. Rosenberg on July 24th? A. I believe it was after.

To the best of my knowledge, I believe it was after.

Q. When is your last dues payment to the Association?

A. I remember signing a check, I believe about a month ago.

I'm not positive.

I think it was a month ago.

Q. It was this year? A. Yes.

Q. 1975? A. Yes.

Q. Have you been paid up from August, '74, through the present time? A. Yes.

Q. Do you keep your own payroll --

Withdrawn.

When you purchased supplies out of state, are all -- are any of these for the Wickham Contracting alone? A. Oh, yes.

127 Q. Are they in excess of $50,000.00? A. Yes.

Q. In the last year? A. Yes, definitely.

MR. APPELL: I have no further questions, Your Honor.

* * * * *

134 THOMAS COMINS

called as a witness, was duly sworn and testified as follows:

JUDGE SCHLEZINGER: Be seated, please, and give the reporter your full name and address.

THE WITNESS: Thomas Comins, C-o-m-i-n-s, 4 Maple Hill Drive, Larchmont, New York.

DIRECT EXAMINATION

Q. (By Mr. Appell) Mr. Comins, with whom are you employed? A. I'm employed by Wickham Contracting Co., Inc.

Q. What is your job? A. I'm an electrical engineer.

Q. How long have you worked at Wickham? A. Approximately, two years.

Q. Did there come a time when you saw Mr. Bernard

135 Rosenberg, of Local 3? A. Yes.

Q. Do you remember when that was? A. I believe it was May or June of 1974.

Q. Do you remember where you saw him? A. Yes.

He came to the -- to our office in Pelham.

Q. What time of the day was that, do you recall? A. It was in the afternoon.

I don't recollect the exact hour.

Q. Who else was present besides you and Mr. Rosenberg, at that time? A. Mr. Biele, Mr. Anthony Biele and Mr. Al Biele and Mr. Perone.

Q. Do you remember Mr. Rosenberg saying anything at that time? A. Yes.

Q. What did he say? A. Well, the gist of the conversation, of his conversation, was that his -- he felt that Local --

JUDGE SCHLEZINGER: As far as you are able, will you give it in terms of what he said?

THE WITNESS: Okay.

He said that it would be more advantageous to our firm if we
136 employed members of Local 3, in lieu of Local 363.

Q. Do you remember to whom he addressed this remark? A. To all people, all the people in the room.

Q. Do you recall anything else during that time, at that time? A. Well, I recollect stating that, notwithstanding the fact that we had a -- we couldn't at this time, employ members of Local 3 because of an agreement we already had, what would be the advantage of utilizing workers from Local 3.

Q. Who said that? A. I believe I brought up that --

Q. Yes? A. And, at this time, he said, well, we have better training program, so forth and so on, and then he also got into an area which said, you fellows have a lot of problems now,

and if you utilized employees from our Union, that being Local 3, you wouldn't have all these problems.

Q. Did there come a time when you saw picketing at the Kings County Hospital site? A. Yes.

Q. Do you remember when you first saw that? A. It was, roughly, three or four months ago.

137 Every Tuesday, I visit the Kings County project to attend weekly job meetings, and, at this time, I observed the pickets.

Q. This is about what month you first noticed them? A. December, maybe a little prior. Probably, the early part of December through the present day.

Q. How often have you visited Downstate or Kings County Hospital, since that time? A. Well, it normally -- Normally, I attend at least one of the projects once a week, and I -- there were times when I'd skip a week here and there.

But I'd say --

Q. Have you seen picketing on those occasions? A. Yes. I observed picketing on every occasion.

Q. At Kings County? A. Well, you know, Kings County and Downstate Medical Center face each other, and there's a common street that runs between them.

I think it's Clarkson Avenue.

It seems to me, on several occasions, I witnessed the pickets on both sides of the road, that is, at Downstate Medical Center and Kings County, and on other occasions, I witnessed them at Kings County, and on another occasion, maybe they'd just be at Downstate.

But they were always present.

138 Q. Have you seen picket signs? A. Yes, I have.

Q. What signs --

Have you seen any of the writing on the signs, or the printing?

Have you seen what they said? A. Well, you know, I didn't really go out of my way to -- to go up and read the signs, but from a distance, I could see Wickham and Perone on strike.

And there was other thin writing in there, in between, but I didn't really see it.

Q. Have you ever seen picketing at the Wickham office in Pelham? A. Yes.

Q. When have you seen that? A. Well, that's been going on now for, again, I'd say, three -- three or four months, every day.

Q. Have you seen picket signs in front of the Pelham office? A. Yes.

Well, that was what I was referring to.

Q. The same ones? A. The same picket signs?

Q. Yes. A. The gist was the same.

139 Wickham --

I can't recollect whether it said, Wickham and Perone.

I know for sure, it said Wickham on strike.

Employees of Wickham on strike.

MR. APPELL: No further questions, Your Honor.

JUDGE SCHLEZINGER: Anything by the Charging Party?

MR. TURCHIN: No, ma'am.

JUDGE SCHLEZINGER: Cross examine.

CROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. Comins, I show you Respondent's Exhibits 1 and 2, and ask you to look at the signs. A. Yes.

Q. Were those the signs that you saw at your -- at the places where you saw picketing? A. I'll tell you the truth, I just don't recollect.

It might have been.

I didn't think it was important at --

I just said --

JUDGE SCHLEZINGER: If you don't know what the sign said, just say so.

THE WITNESS: I don't know.

I don't.

140 MR. ROTHFELD: May I have the statement, please?

MR. APPELL: Let the record show that I'm handing Mr. Rothfeld a statement that Mr. Comins executed before me, this morning.

Q. (By Mr. Rothfeld) Do you remember what month of what year, Mr. Rosenberg visited the Pelham office where you worked? A. No, I don't.

I know approximately, that's about all.

Q. What is your best approximation? A. May or June of last year.

Q. I see.

Do you remember any particular words that Mr. Rosenberg said?

Or do you just have a general impression? A. Well, I remember certain, particular words.

Q. What were they? A. Well, the fact that -- the thing that struck me was, when he said that, when we asked him what would be the advantage of joining Local 3, notwithstanding the fact that we couldn't do it anyway, because we had an agreement, he said, well, you fellows have a lot of problems, which could be avoided, if you joined Local 3.

Q. You're an -- You're a graduate electrical engineer,

141 sir? A. Yes, sir.

Q. You were sitting with the Biele brothers and Mr. Perone?
A. That's correct.

Q. And you're a member of Teamsters Local 363? A. No.

Q. I see.

So, when Mr. Rosenberg talked about you fellows joining --
A. He meant the company.

Q. That's your impression of what he meant? A. No.

That's specifically what he meant, because he wasn't talking to any members of the Union.

Q. I see.

Now, you used the words before, "in lieu of."

Do you recall that testimony? A. In what --

Could you repeat the sentence I used it in?

Q. Did you talk about -- Did you talk about Mr. Rosenberg asking anything of your people, the people who were there, at your Pelham office, about doing anything in lieu of doing anything else?
A. I wish you'd be more specific.

142 Q. You have no recollection of such testimony? A. Of my testimony?

Q. Yes. A. This is the first time I testified.

Q. Yes, of about ten minutes ago.

Do you recall whether you testified about ten minutes ago, to the effect that Mr. Rosenberg asked the people assembled in the Pelham office to do one thing in lieu of, quote, unquote, doing something else?
A. I don't --

You mean, in joining Local 3, in lieu of 363.

Q. Okay.

Did Mr. Rosenberg used the words, in lieu of, or are they your vocabulary? A. No. That's just my general description of what was said.

* * * * *

152 REDIRECT EXAMINATION

Q. (By Mr. Appell) Mr. Comins, you had testified that Mr. Rosenberg had suggested that you employ members of Local 3, in lieu of 363.

Then you explained that the words, in lieu of, was your own characterization.

Can you tell us if he mentioned 363? A. Yes.

Q. In other words, he said, in lieu of, or instead of, but he mentioned 363? A. He said to --

He did mention 363, and Local 3.

MR. APPELL: No further questions.

JUDGE SCHLEZINGER: Anything by the Charging Party?

MR. TURCHIN: No, ma'am.

JUDGE SCHLEZINGER: Any recross?

RECROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. Comins, did Mr. Rosenberg

153 ask you or Mr. -- either Mr. Biele, Anthony Biele, or Mr. Al Biele, or Mr. Perone, to discharge any one of his employees and replace him?

MR. APPELL: Object.

A. Not directly, but, indirectly.

JUDGE SCHLEZINGER: Just a minute; there's an objection.

MR. APPELL: I withdraw the objection.

Answer.

Q. Directly or indirectly, sir, whom did Mr. Rosenberg, if anyone, ask be discharged or replaced? A. Members of Local 363.

Q. What did he say about that? A. I just -- I think I have already stated that it would be -- he requested that we utilize members of Local 3, in lieu of Local 363.

Q. And you testified that, in lieu of, was your vocabulary? A. That's right.

Q. And not his, is that correct? A. Yes.

Q. Am I correct, sir? A. Yes.

Q. What words did Mr. Rosenberg use in lieu of, "In
154 lieu of," quote-unquote? A. I don't recollect the exact terminology.

That was the gist of the conversation.

MR. ROTHFELD: That's all.

JUDGE SCHLEZINGER: Anything further of this witness?

MR. APPELL: No, Your Honor.

Thank you.

JUDGE SCHLEZINGER: The witness is excused.

(Whereupon, this witness was excused.

MR. APPELL: I call Mr. Lawrence Schlau, S-c-h-l-a-u.

MR. TURCHIN: At this time, Your Honor, I would like to be excused, as I discussed with you, and I waive any rights with reference to examination or cross examination, and will allow the matter to be handled fully by the General Counsel.

* * * * *

165 ALBERT BIELE

called as a witness, was duly sworn and testified as follows:

JUDGE SCHLEZINGER: Be seated, please, and give to the reporter your full name and address.

THE WITNESS: Albert L. Biele.

4 Ash Street, Monsey, New York, M-o-n-s-e-y.

DIRECT EXAMINATION

Q. (By Mr. Appell) Mr. Biele, what is your title?

A. I'm Secretary for Wickham Contracting.

Q. And did there come a time when you saw Bernard Rosenberg?

A. Yes.

Q. Do you remember when that was? A. That was about a year ago.

166 Q. Do you remember the date? A. No exactly.

I'd say, around April, May, June.

Q. Where did you see him? A. He came up to the office.

Q. Do you remember what time -- which office is that?

A. The Pelham office.

Q. Do you remember what time of the day that was?

A. Say, sometime in the afternoon.

Q. Who else was present besides him and yourself?

A. Tom and my brother Tony.

Q. Tom is who? A. Comins, I'm sorry.

Q. Tony is Biele? A. Tony Biele and, I think, Ralph was there also, Ralph Perone.

Q. Did Mr. Rosenberg talk to you? A. Actually, it was more or less of a general conversation.

Q. What did Mr. Rosenberg say? A. He was explaining about the pool of men Local 3 has, the set up.

I guess, more or less, he was trying to convince us to --

167 Q. What did he say? A. What did he say, exactly?

I don't remember the exact words that he said.

JUDGE SCHLEZINGER: They don't have to be the exact words, but in substance what he said, rather than the way you interpret what he said.

THE WITNESS: He said, we have a good pool of men to pick out of. We feel that you'd be much better off with Local 3 than your present Union.

He explained to me how he had a better training program, and that we would not have -- we would not run into difficulties as far as troubles that have been happening, and the way I can explain this is that the actual picket signs --

JUDGE SCHLEZINGER: This is what he said?

THE WITNESS: Yes. This is what he said.

No, he didn't say, I'm sorry, let me backtrack.

I left off where he was explaining of how we would not have as many difficulties as we're having at present.

And that's about -- I would say, that's about the brunt of it.

Q. Do you remember how the meeting ended? A. Actually not.

It's been a long time, and I think --

There was one thing.

168 He said, I'd like to leave the door open for further discussion, and we said, that's, you know, talking never hurt anybody, and that's how we left it off.

Q. Did there come a time when you saw picketing at your office at Pelham? A. Yes.

About three or four months ago.

Q. Do you remember what the picket signs said? A. Not exactly, but it had the --

I think it said, the employees of Wickham and Perone are on strike, and had something about decent wages, and of this nature.

Q. Did there come a time when some of the pickets came upstairs? A. As a matter of fact, I had been in the office, I had gotten to the office that day late, and there was a fellow upstairs, I don't know his exact name.

I believe it [illegible] Walter something.

He had already been talking to Ralph.

He introduced me. I forgot his name. He had said, you know, could we talk. And I said, you know, talking never hurt anybody.

We went into the back area, the office has a "U" shape, and
169 the back area is the office space, and he said, would you like to have a meeting with, you know, somebody from our Union, just to speak about possibilities of going into Local 3.

We were having a lot of difficulty at the time, and, actually, there was nothing I wouldn't have done to alleviate, to dissipate any kind of difficulties we were having.

Q. What did you say to him? A. I said, well, sure, I'll have -- you know, I wouldn't mind having a meeting.

Q. Do you remember what day that was, that they came up? A. No.

Q. Do you remember how long ago it was, or what month? A. I'll tell you something, I think it was in the summertime, but I'm not exactly sure of the exact date.

Q. After that, did there come a time when you did have a meeting with Mr. Thomas Van Arsdale? A. Right.

That's -- A meeting was recommended.

We agreed to have the meeting.

We had an awful lot of trouble, and I felt like maybe there was some kind of information we could get from Mr. Van Arsdale --
170 JUDGE SCHLEZINGER: You're not being asked what your feelings were.

THE WITNESS: There was a meeting.

Q. Where was it held? A. At a restaurant in Queens.

Q. Who else was present besides Mr. Van Arsdale and yourself? A. My brother, Tony Biele, and Ralph Perone.

Q. Do you remember what time of the day that meeting took place? A. I think it was early afternoon.

Q. What did Mr. Van Arsdale say, what did you say, what did your brother say, what did Mr. Perone say, at this meeting? A. The meeting started off, I think for the first twenty minutes, I don't think anybody said a word.

I was under the impression that Mr. Van Arsdale was going to tell me something.

Q. Just tell us what was said. A. All right.

I'll give you the brunt of what I could remember.

Q. All right. A. Not exact words.

Again, we started off with the -- that we have a good choice of manpower.

171 Q. Who said that? A. Mr. Van Arsdale.

And that he felt that it would be advantageous to us to join Local 3.

My brother explained to him that we belong to an Association, which had a contract with 363, and that we wouldn't be able to join Local 3, except by, you know, through this channel.

They had -- They had some sort of election going on, or I think the election was over.

They were tallying the votes.

Then there was other conversations which added up to, I think Mr. Van Arsdale got the impression that we were not going to join Local 3, at that particular time.

Q. What did he say? A. Well, toward the end, he said, did you ever hear the specifications?

Now, specification is a book you get with a job, tells you -- elaborates on how the job should put together. And usually when somebody says something like that, it means that -- I took it to mean that he had a lot of influence with the City.

MR. ROTHFELD: Objection.

172 THE WITNESS: And that he could make it tough for me.

MR. ROTHFELD: Objection, move to strike.

THE WITNESS: However, I --

JUDGE SCHLEZINGER: Just a minute.

MR. ROTHFELD: Not responsive, not relevant.

And the speculations of the witness are not relevant.

JUDGE SCHLEZINGER: Would you please confine your answer, first to what was said?

If there is any question about the effect of what was said, Counsel will ask you further about that.

THE WITNESS: Fine.

JUDGE SCHLEZINGER: But you tell us first, only what was said.

THE WITNESS: Fine.

I answered, saying that, when we bid a job, we bid by the specification, and that it wasn't my concern at the time.

And the meeting ended, and Mr. Van Arsdale got up and he left the table.

Q. What happens if an electrical contractor does not do jobs by the specifications? A. Well, --

MR. ROTHFELD: Objection.

173 JUDGE SCHLEZINGER: I'll permit the question.

Q. Go ahead. A. Well, the specifications, it's a lot of, I mustn't call it red tape.

It tells you exactly, to the last dime, how the job should be put together.

Q. Who makes up the specifications? A. The City.

Q. What happens to a contract that is found not to abide by the specifications? A. Well, like the job is inspected by a City Inspector, and whatever he finds wrong with the job, I would say, aside from the specification, what the specification calls for, he would then send you an elaborate punch list to do repair work, or to make any type of change that would have to be made.

Now, we operated by the specification.

But, --

Q. Now, can an electrical contractor be removed from a job for failing to conform with specifications? A. Could happen.

Q. Now, --

MR. ROTHFELD: Object to what could happen.

A. There have been contractors --

JUDGE SCHLEZINGER: Just a minute.

174 THE WITNESS: I'm sorry.

JUDGE SCHLEZINGER: I take it, this all goes to the question Van Arsdale asked about this company operating --

MR. APPELL: Yes.

JUDGE SCHLEZINGER (Continuing): -- operating pursuant to specifications?

MR. APPELL: Yes, Your Honor.

JUDGE SCHLEZINGER: I'll permit the question.

Q. Do you have any personal knowledge of any contractors being removed for failing to conform with specifications? A. I don't have names, but contractors have been removed from the job.

Q. Do you remember now, anything else Mr. Van Arsdale said at that meeting? A. I --

Q. If you recall. A. Those were the most important things.

I think he was, basically, trying to get us over to Local 3.

Q. You don't recall anything else? A. I'm sure there was a lot more said.

Q. You don't recall it now? A. No.

175 JUDGE SCHLEZINGER: Do you think if you stopped for just a minute to think about it, you'd recall anything else?

THE WITNESS: The meeting was such a long time ago --

JUDGE SCHLEZINGER: If you don't recall, you don't.

Q. Do you remember if Mr. Van Arsdale said anything after your brother explained that you belonged to an Association and had a contract with Local 363? A. Yes.

He explained that there was a way of doing it.

There was a way of getting around that particular problem.

And I don't know exactly how he explained it, but he explained that he can pull out of the Association and have an election, something of this nature.

Q. Have you ever seen the pickets at Kings County Hospital? A. Yes.

Q. Have you seen them at Downstate Medical Center? A. Yes.

Q. How long have you seen them there? A. I'd say they've been there about three months, at least.

176 Q. Have you seen the signs that they carried there? A. Similar to the signs in front of the office.

MR. APPELL: I have no further questions, Your Honor.

JUDGE SCHLEZINGER: At this time, we'll take a five minute recess.

(Whereupon, there was a short recess taken in the hearing.)

JUDGE SCHLEZINGER: We'll go back on the record.

CROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. Biele, what work do you do? A. I'm basically a supervisor for the jobs on the outside.

Which ever work that we're involved with, to make sure the jobs run properly.

Q. Do those jobs include all the jobs that you've heard testified about today? A. Yes.

Q. Including public school jobs? A. Well, I can't cover the entire field, it's almost impossible.

177 I would say major jobs.

Jobs that, I would say, over a certain amount of money.

* * * * *

181 Q. * * * Now, were you present at the entire conversation between Thomas Van Arsdale and your brother? A. Just about.

Except a time now and then when I had to go to the men's room, I guess.

Q. You generally went to the men's room alone? A. Yes.

182 Q. And not with your brother? A. Alone.

Q. All right.

Now, did -- do you recall whether Thomas Van Arsdale said to your brother, now that we have all your men, are you willing to sign a contract with Local 3? A. I'd say, he definitely said that.

I don't know if that's the exact words, but he had --

Q. Now, sir, are employees paid at the Pelham address? A. My employees are.

Q. And do you know whether or not any Ralph Perone employees are paid at the Pelham address? A. Ralph handles, he handles his own men.

Q. Sir, -- A. He handles his own men, Ralph Perone.

Whatever he does, as far as payroll and so forth, he takes care of that himself, personally.

Q. Do you know whether or not Ralph Perone men are paid at the Pelham address?

MR. APPELL: I object, Your Honor.

JUDGE SCHLEZINGER: I'll permit that question.

183 Q. Answer, please. A. There may have been occasion when Ralph handed a man or two a check in the Pelham address.

Q. Were you present? A. I don't bother with it.

If he does, he does.

I don't --

JUDGE SCHLEZINGER: If you don't know, say you don't know.

THE WITNESS: I don't know.

JUDGE SCHLEZINGER: Don't guess.

THE WITNESS: I don't know.

Q. (By Mr. Rothfeld) It's your testimony, you were never present when Ralph Perone handed payroll envelopes out at Pelham, at the Pelham address? A. I would have to say that, in the years that we've been dealing, I'm sure that I've seen him hand an envelope or two out at the Pelham address.

Q. Okay.

MR. ROTHFELD: That's all.

* * * * *

185 RALPH PERONE

was called as a witness on behalf of the General Counsel, having been first duly sworn by Judge Schlezinger, was examined and testified as follows:

JUDGE SCHLEZINGER: Please be seated and give your name and address to the Reporter.

THE WITNESS: Ralph Perone, 3213 East Tremont Avenue, Bronx, New York.

DIRECT EXAMINATION

Q. (By Mr. Appell) Mr. Perone, are you self-employed? A. Yes, I am.

Q. In what business are you? A. I'm an electrical contractor.

Q. Are you incorporated, or are you in a partnership? A. No. I am sole owner of Ralph Perone, licensed electricians.

Q. You're an individual proprietor? A. Yes, I am.

186 Q. Is there a time when you saw picketing up at the Wickham office in Pelham? A. Yes, there is.

Q. Do you remember when you first saw that? A. Some time in October. Late September or early October.

Q. Do you remember how many -- do you remember a time when you saw a good many pickets? A. Yes, I do.

Q. Do you remember when that was? A. Around November or December.

Q. Where did you see them? A. At both places.

Kings County Hospital I saw pickets and at the Wickham office I saw pickets.

Q. On one occasion at Wickham that you referred to, how many people would you say you saw picketing at the office? A. The police and the newspaper estimated 500 people, and I would say that they were correct.

MR. ROTHFELD: Object and move to strike what the police estimated.

A. I estimated them to be about 500.

MR. ROTHFELD: The officer is not an estimator for the police force.

187 JUDGE SCHLEZINGER: Will you give us your best estimate?

THE WITNESS: My best estimate would be about 500 people.

Q. (By Mr. Appell) Did there come a time when you took part in a meeting with Thomas Van Arsdale? A. Yes, there was.

Q. Do you remember when that was? A. October 7, 1974.

Q. Do you remember what day of the week that was?

A. That was on a Monday.

Q. Who else was present at that meeting? A. Anthony Biele, Al Biele, and myself.

Q. Where did it take place? A. In the Golden Chariot, in Queens.

Q. What time of the day was that meeting? A. Between 12:30 and one o'clock.

Q. How did that meeting come about, do you recall?

A. Well, I happened to be up at the Wickham office one morning, I went up to discuss a few things with Tony Biele, and one of the pickets stopped me, I believe his name was Walter, and asked me if he could possibly come upstairs and have a few words with us, and I said sure. I says come on up, have a cup of coffee.

188 We went upstairs, and he asked me, maybe there's something that can be done, why don't we set up a meeting somehow or another

with you people, and I said look we are having quite a bit of problems, I said if something could relinquish our problems, I'd be glad to have a meeting.

Q. How long have the picketing been going on at Pelham up to that point, do you know? A. I'd say about a week.

Q. At the meeting itself, what did Mr. Van Arsdale say, what did Mr. Biele -- the two Mr. Biele's say, what did you say? A. Well, when Mr. Van Arsdale got there, he introduced himself, and then he says, Jesus, must be some sort of important meeting, I really don't know what it's all about, because I never go to meetings with contractors, he says I have business agents that take care of this.

MR. ROTHFELD: Who said this?

THE WITNESS: Mr. Van Arsdale.

This is what he said to me anyway. And then we sat down, and nothing really was said.

And then when it got down to finally discussing things, after we had a drink, we ordered a cocktail and we were drinking, he said well I guess that you fellows are ready to sign up now.

189 And I looked at Al and Tony, and one of the Bieles says I don't know what you mean, and Mr. Van Arsdale said well, we have all of your men now.

And I asked him, I says are you talking about my men, or are you talking about Wickham's men, and he looked at me kind of shocked, he says is there a difference, and I said yes, there's definitely a difference.

I says I am Perone, I have my own men, and Wickham has his own men. And I says you don't have either -- not all my men, I said I don't know about Wickham's, you don't have all of my men, you only have ten out of about thirty, and he says to me well, I guess I better go back and do a little checking, somebody hasn't been doing their homework.

And things went on, and he says did you have -- have you considered coming to Local 3, and I answered him that I didn't have anything to say about it, it was up to my men, and I had a standing contract with Local 363, and that I had no choice in the matter, but to stay with Local 363.

He says that he could make it very beneficial if we did go Local 3, because there were specs written up for City of New York jobs, and certain things could be done to make sure the letter of the spec was done on every job, and that he was going to have a meeting with certain people to make sure all contractors in the City of New York,

190 not specifically stating us, were living up to the letter of the spec.

Q. (By Mr. Appell) Did he say that to you or to the two Mr. Biele's or -- A. He was addressing it to all of us. Just about everybody was asking him questions, he was asking each person, and it was just directed amongst all people.

MR. ROTHFELD: May I have a standing objection on the grounds of relevancy, to this line?

JUDGE SCHLEZINGER: To the entire conversation?

MR. ROTHFELD: No. To anything relating to proposed meetings with regard to specifications.

JUDGE SCHLEZINGER: Well, to the extent that these things are being said at the conversation?

MR. ROTHFELD: Well, Your Honor, I believe it's irrelevant, of course your ruling will dispose of it.

JUDGE SCHLEZINGER: Well, to the extent that he's giving the conversation, I will permit him to give whatever was said in that conversation.

Q. (By Mr. Appell) Continue, Mr. Biele, with what was said in the conversation. I'm sorry, Mr. Perone. A. Then he says

that we should consider going Local 3, because they had a large pool of experienced men, and I says my men were very much so

191 experienced, and I says that they went through a rigid apprenticeship, the same as anyone else, there's an apprenticeship program.

I said as a matter of fact, we were told that school jobs took certain type of mechanics to do, I says, and our mechanics could do any type of work.

They do school jobs, they could go to the hospital job, and they could do any type of job there is, and I considered them excellent, qualified electricians.

And I didn't think I needed an excellent pool of men, because I had an excellent pool of men at hand.

And he says that we should consider going to Local 3. Benefits were, you know, that they could benefit us in many aspects, and then a few more words were said, which I really can't remember, or recall, and he just got up, kind of aggravated, and left.

Q. Now, you say there are certain things he said you don't recall? A. Really, you know, I just don't remember. Those are the only things that are striking my mind right now. I have been going over them in my head as much as I can.

Q. Do you remember anything that Mr. Van Arsdale said to Mr. Anthony Biele? A. Well, originally he was just questioning Mr. Biele, because he didn't know that there was a distinction between Wickham or Perone.

192 Q. What did he say to Biele, if you remember? A. Well, asked Mr. Biele to join Local 3, and that they could -- he didn't believe there was a contract between Mr. Biele and Local 363, and that he could have his men vote individually to vote Local 3, and therefore to Local 3 you know, legally.

Q. That who could tell his men to vote for 3? A. Mr. Biele could tell his men to vote Local 3, and he, as an individual contractor, could then go Local 3.

Q. Okay. A. In my case, he didn't know that I had a different contract with Local 363, and that mine was a standing contract that was different. That's why my men didn't vote in the election.

Q. Do you remember anything else Mr. Van Arsdale said at this time? A. I --

Q. If you recall? A. No, I don't recall.

Q. Do you recall him saying anything about how it could be worked out?

MR. ROTHFELD: Objection.

A. I think I just covered that.

JUDGE SCHLEZINGER: Just a minute.

Don't answer when there's an objection.

193 MR. ROTHFELD: I think leading should be up to a point only.

MR. APPELL: Your Honor, the Witness' recollection is exhausted.

I believe I'm permitted to ask a refreshening question at this point.

MR. ROTHFELD: This is direct.

JUDGE SCHLEZINGER: It is, but Counsel can refresh the Witness' recollection, if his recollection has been exhausted.

MR. ROTHFELD: I object to leading, Your Honor.

Q. (By Mr. Appell) Mr. Perone --

JUDGE SCHLEZINGER: Counsel can refresh the Witness' recollection, and may make his questions as unleading as possible.

MR. APPEALL: Yes.

A. I believe I answered that by stating that he says that he could have his men vote Local 3, and that he's able to bypass the contract with Local 363 That that was the way out.

There was a way out by having his men vote Local 3, instead of Local 363.

Q. You did testify to that earlier. A. Yes, I already did.

194 Q. Was anything agreed on at the meeting? A. Nothing at all was agreed upon.

Q. Was the picketing going on that day? A. No. The fellow that was up the office, again I believe his name was Walter, had said that in good faith that Friday previous, had said a good faith effort would be made, and they'd show their good faith by removing the pickets while the meeting was going on.

And they were removed.

Q. Did it continue at Pelham after awhile? A. Yes, it did, about two weeks afterwards it started again.

Q. Is it still going on now, to your knowledge? A. To the best of my knowledge, it is.

Q. Has it been going on every work day? A. Every day except rainy days.

Q. How about up at -- how about at the Downstate Medical Center, have you noticed if there's been picketing there? A. The only time I really haven't noticed Downstate. I don't go to Downstate at all. I go to Kings County for job meetings and to check on my men to bring pay roll and so forth, and I do notice them at Kings County.

Q. How long have you seen them there? A. At Kings County, since December 3rd.

195 Q. How about at Downstate? A. At Downstate, I remember

December 3rd, because that was the date of the mass picketing down there. I notice they were at both places.

Q. How many pickets did you see down there, when you say mass picketing? A. I would say there was a hundred, if not better.

Q. Have you seen the picket signs at Kings County and at Downstate? A. Downstate I'm not too clear about it. I wasn't concerned with Downstate.

At Kings County, it stated Wickham and Perone on strike. Some of them said for recognition and decent wages.

Others just said Wickham and Perone on strike, Local 3, IBEW.

Q. Is picketing still going on at Downstate and Kings County, to your knowledge? A. Kings County, as far as I know it is.

Q. By the way, at Kings County -- strike that.

By the way, do you recall a time when you -- when Mr. Bernard Rosenberg met with you? A. Yes, I do.

Q. Do you remember when that was? A. Sometime in May, 1974.

196

Q. Where was that? A. That was up at the Wickham office.

Q. Who else was present? A. Anthony Biele, Al Biele, and Tom Comins.

Q. What time was that, do you recall? A. Some time in the afternoon.

Q. What Mr. Rosenberg say and what did Mr. Biele say, Anthony Biele? A. I don't remember, you know, what Mr. Biele actually said or Al Biele or Tom Comins. I know that we were just speaking in general, and the only things that I wanted to know is actually what Local 3 proposed that they were going to do.

I had no intentions, or not only had any intentions, I had no right to discuss what was going on. It was up to my men.

Q. How did that meeting come about? A. I really couldn't say, except from what Mr. Biele said. I was not up there, I was just called in for the meeting.

Q. What did Mr. Rosenberg say at that meeting, if you recall? A. Well, he says that we were having problems that could be, you know, -- that we were having problems, and that -- in regard to apprenticeship training program, and regard to a trainee, minority trainee program, and certain other things, that
197 all of the problems would not exist if we were a contractor in Local 3, and again I stated that we had -- I had a contract with Local 363, and that I couldn't do anything about it.

Q. Do you remember what Mr. Anthony Biele said? A. I wouldn't know if it was Anthony Biele or Al Biele or anything, you kn w, like who said, I wouldn't remember which of the people said what.

Q. Do you remember what the Biele's said, if you're not sure wh e it was? A. Well, they told him also that they had a contract n Local 363, and again was explained to us about the large pool of men that Local 3 had, and how experienced they were, and they went through a rigid apprenticeship program, and after that they went to Bayberry to study citizenship, and then they served jury duty, and did certain things after that, that they could really keep us supplied with men, and keep the jobs running smoothly.

Q. Any agreements reached at that time? A. No agreements at all.

MR. APPELL: I have no further questions, Your Honor.

JUDGE SCHLEZINGER: Cross examination.

CROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. Perone, you testified that on
198 December 3rd, that at the hospitals, there was mass of about a hundred? A. Yes.

Q. Did you count them? A. I think I got up to about 60 or 70, and then I stopped counting, yes.

Q. I see.

How long did you stay around and watch the pickets? A. I stayed around and I watched the pickets until, I believe a photographer for Local 3 was there, and took pictures, and then police came and they dispersed picketers, and I noticed about half the picketers just left, and then certain ones remained.

Q. Sir -- A. I stayed an hour and a half, two hours.

Q. About how long after the photographer came for Local 3, and took the pictures, did pickets leave? A. Did certain pickets leave?

Q. Yes. A. I'd say some left immediately and some left a half hour later.

Q. By immediately, you mean immediately as soon as they got their picture taken? A. Certain ones posed. After they got through posing, those people left, yes.

199 Q. Others left about a half hour later? A. Others left a half hour later, others moved on down the street and stayed down the end of Albany Avenue.

Q. At the hospitals, is there now a limit policies imposed of about ten pickets? A. I don't know. I know there's always about ten pickets.

Q. The typical picket line is about the size, and the signs, as set forth in Respondent's 1 and 2? A. No. This is much larger. I have never seen a sign like that.

Q. Much larger, meaning -- meaning there are usually fewer people than are in these lines? A. Fewer people, and I have never seen a sign like that.

MR. ROTHFELD: Let the record show there are eleven pickets in each of these exhibits.

Q. Now, are -- you say there was a point where you saw about 500 pickets? A. That was at the Wickham office.

Q. How high did you count then, if you counted? A. Between Tony Biele and myself, we got up to about 230, 240 pickets, and they were still coming up the street.

Q. And -- A. He was catching them coming down this side of the street, I was catching them coming down this side of the

200 street, and the girls were counting people stopping their cars and coming across the street, and we couldn't count anymore because they were swarming all over the place.

Q. You're sure you weren't counting the same people twice? A. No way.

Q. Did Local 3 photographer also come and take pictures? A. I don't know. I know the newspaper was there. There were so many people you didn't know who was there outside of police officers.

Q. There were a couple of pictures taken by somebody? A. I know the newspaper took pictures.

Q. Do you recall how long after the newspaper took pictures, the bulk of the pickets left? A. All the pickets were gone by 3:30, I believe.

Q. About what time were the newspaper pictures taken? A. 3 o'clock.

Q. Within a half hour all those pickets dispersed? A. Within an hour.

The police instructed the pickets to disperse, yes.

* * * * *

203 Q. At the conversation between Mr. Van Arsdale and you and the Biele brothers, was anything mentioned about a law suit? A. That's one thing I forgot to mention. Yes, something was brought up that there was a law suit between Local 3, it's associations, I guess you could say, and Wickham contracting and Ralph Perone, and Mr. Van Arsdale did say that it wouldn't matter in anyway, even if we went to Local 3, we could still continue this law suits.

Q. Who first mentioned the law suit? A. That I don't remember. I really wouldn't remember who brought up the conversation regarding that.

Q. Do you remember whether Mr. Anthony Biele mentioned the law suit? A. He mentioned it. I mentioned it. It was mentioned by just about everybody.

204 Q. I see.

Did anybody mention that -- whether affiliation with Local Union Number 3, at that time, might interfere with the progress of that law suit? A. No. Just Mr. Van Arsdale did state we wouldn't have to worry about the law suit interfering, about, you know, anything being interfered with the law suit, because we could still carry it out, even though we were in local 3.

Q. Mr. Van Arsdale said you wouldn't have to worry? A. He said we wouldn't have to worry about the law suit being dropped, we wouldn't have to drop the law suit if we went to Local 3.

Q. Did any of you gentlemen express worry about the law suit in connection with your affiliating with Local 3? A. No. Because we had no right to join Local 3, without our members doing it, and I guess that the man just didn't seem to realize this.

We had no choice in the matter, except if our men did go there.

Q. Sir, I would appreciate it if you would answer the question.

Did any of you gentlemen express any worry or concern about the progress of the law suit, in connection with Local 3?

205 A. No.

Q. Mr. Van Arsdale himself, volunteered to soothe your fears that you hadn't expressed, is that it? A. He was trying to get us to go Local 3, and he was trying to show us in everyway why we should go Local 3.

Q. It was his own idea to soothe your fears about that law suit, and how your -- how you're going to Local 3 wouldn't interfere with it? A. I just stated before I don't remember who brought up the thing about the law suit, whether it was Mr. Van Arsdale or whether it was myself, or Mr. Biele.

I just don't remember which one brought up the fact of the law suit.

Q. I see.

Did anybody mention the possibility of any recovery against the City of New York, by settlement or otherwise? A. I believe that the problem of the schools did come up. That we were thrown off several school jobs, and we were just discussing in general things, and we says we did such harm by being thrown off the school jobs.

Q. Who said? A. I believe I said it.

Q. I see. A. That my men were suffering, that they

206 were afraid because of -- of being thrown off the school jobs and such, and that it did cause harm, moneywise, and everything, but that we had expected to get the money back from the City of New York, because of this.

You know, it's just that I was showing the man that, you know, we were harmed in a certain aspect, but we were hoping to be compensated by the City of New York for the harm that was done to us.

Q. Did you make any requests of Mr. Van Arsdale in connection with any such hopes for recovery against the City of New York? A. No. Just to my lawyer. He's the only one I have hopes in.

Q. I see.

I envy your lawyer.

Now, you did feel that Mr. Van Arsdale had some degree of influence with the City of New York? A. Yes, I did.

Q. Did you express your feeling that you believed Mr. Van Arsdale had some influence with the City of New York? A. No, it wasn't discussed.

Q. Neither you nor the Biele brothers, ever mentioned that any of you believed Mr. Van Arsdale had some influence with the

207 City of New York? A. I --

Q. At that meeting? A. Not that I recall.

Q. Sir, does not that you recall mean you're certain or uncertain? A. It means I don't remember.

Q. I see.

You don't remember whether that was discussed or not? A. His affiliation with the City of New York? No, I don't remember that at all.

* * * * *

216 ALBERT BIELE

was called as a witness, on behalf of the General Counsel, having been previously sworn by Judge Schlezinger, resumes testimony as follows:

* * * * *

221 RECROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. Biele, you say that these were not the signs which you remember? A. Definitely.

Q. All right.

Would you please -- give me a piece of black paper.

Mr. Biele, I hand you a sheet of paper and a pen.

Would you please write out, to the best of your recollection, what was the wording on the signs which you habitually saw, at the Kings County Hospital and the Downstate Medical Center?

222 JUDGE SCHLEZINGER: I think the Witness has indicated that there was more than one type of sign.

THE WITNESS: Right.

JUDGE SCHLEZINGER: Do you want him to do two signs?

MR. ROTHFELD: Two signs, if you remember two. One if you remember one. Three if you remember three. Whatever you remember. A. This is to the best of my recollection, okay?

JUDGE SCHLEZINGER: Of course.

A. That's one sign. Do you want me to write on the back of this?

Q. Sure.

Whatever you remember. I'll give you another sheet. A. Thank you.

Do you want me to indicate the color of the letters? This one here had red letters, where it said Wickham-Perone, and for recognition and decent wages were outlined in red letters.

The rest was blue.

MR. ROTHFELD: Perhaps we should have that marked for identification.

THE WITNESS: Could I mark it up with the colors? I remember it that well, that I remember the colors.

223 MR. ROTHFELD: Can we stipulate that the colors are irrelevant?

MR. APPELL: I would --

THE WITNESS: My memory is very good.

MR. APPELL: Your Honor, I think if the Witness has been asked to identify these signs with such specifics, that his entire description would be relevant.

MR. ROTHFELD: All right.

Color them any color you like.

THE WITNESS: That's one.

MR. ROTHFELD: Can I have it marked for identification, please?

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 3 for identification.)

Q. (By Mr. Rothfeld) That's enough. A. This one I remember, too. This was all printed letters, and the Wickham was in handwritten letters, blue ink. You want this one.

* * * * *

224 16 Court Street,
Brooklyn, New York,
March 6, 1975.

* * * * *

227 CONTINUED CROSS EXAMINATION

Q. (By Mr. Rothfeld) Mr. Biele, with respect to the second sign which you say you saw, but which -- of which you have not yet

228 prepared a facsimile, can you now, to save time, state from your memory, what that second sign said? A. Yes.

Employees of Wickham on strike. Local 3, I.B.E.W., International Brotherhood of Electrical Workers Union, and then it had the address of Jewel Avenue on the bottom.

Q. Where did you see that sign? A. I saw that sign in front of my place of business.

Q. Did you -- A. 415 Fifth Avenue, Pelham, New York.

Q. Did you see it in front of the Kings County Hospital?

A. No, I didn't.

Q. Did you -- A. I don't recall seeing that particular sign, no.

Q. Did you see it in front of the Downstate Medical Center?

A. I don't remember.

At this time, I don't remember.

Q. Okay.

Is it now your testimony that the only signs you remember seeing in front of either Hospital, other than the ones set forth in Respondent's 1 and 2, is the sign which is now marked Respondent's Exhibit 3 for

229 identification?

MR. APPELL: I object as to form.

He said, other than Respondent's 1 or 2.

It assumes facts not in evidence.

The witness has testified that he never saw those signs that are in Respondent's 1 and 2.

JUDGE SCHLEZINGER: Would you reframe your question, please?

MR. ROTHFELD: All right.

Q. (By Mr. Rothfeld) Mr. Biele, is it now your testimony that the only sign which you recall seeing in front of the two hospitals,

is the sign which you have written out, which is now marked Respondent's 3 for identification? A. This sign I definitely saw. This sign I definitely saw.

I just don't recall whether I saw the other sign I described at the hospital sites at this time.

I know I've seen the signs.

I don't want to get mixed up between my office and the job sites that we have.

MR. ROTHFELD: Offer it in evidence.

JUDGE SCHLEZINGER: Any objection?

MR. APPELL: No.

230 JUDGE SCHLEZINGER: Respondent's 3 will be received in evidence.

(Whereupon, the above referred to was received and marked Respondent's Exhibit 3 in evidence.)

Q. (By Mr. Rothfeld) Mr. Biele, I show you Respondent's 1 and 2.

Look at them, please.

Now, sir, is it or is it not true that, with respect to the picketing in front of these two hospitals, the police instructed Local Union No. 3 that they may have between six and ten pickets in front of each location? A. I understood this here in reference to a telephone conversation with the Police Department.

Q. What was that telephone conversation? A. The police informed me that they had a -- on a particular date, I think it was December 3rd, that they had a large number of policemen at the site, and --

Let me just think --

I'm sorry, the phone conversation I had was with the hospital authorities, and they saw the police come to the

site and disperse the crowd and limit the pickets to a small number of pickets.

I was informed by the hospital authorities, the security police. They were concerned that people could not get into the hospital.

231 Q. Sir, was that small number six to ten pickets in front of each location? A. Yes.

* * * * *

245 MR. ROTHFELD: I call Mr. Bernard Rosenberg.

Whereupon,

BERNARD ROSENBERG

called as a witness, was duly sworn and testified as follows:

JUDGE SCHLEZINGER: Be seated, please, and give the reporter your full name and address.

THE WITNESS: Bernard Rosenberg.

31 Piper Drive, Searingtown, New York.

DIRECT EXAMINATION

Q. (By Mr. Rothfeld) Mr. Rosenberg, what is your occupation? A. Business representative.

Q. Of? A. Local Union 3, I.B.E.W.

Q. How long have you been business representative? A. Approximately, eight years.

Q. What is your trade or profession, otherwise? A. Prior to that, I was an electrician.

Q. For how many years? A. I've started in December, 1946.

Q. Now, sir, as business representative, did you visit the premises of Wickham or Wickham-Perone, at Pelham, in the spring of 1974? A. Yes.

246 Q. With whom did you speak? A. I spoke -- at that meeting, I met with Mr. Tony Biele, Al Biele, I believe Ralph Perone was there, Tom Comins, I believe.

Q. Comins? A. Comins, the engineer.

Q. At that meeting, did anyone tell you that there were two enterprises at those premises?

MR. APPELL: Objection.

JUDGE SCHLEZINGER: This is your own witness.

MR. ROTHFELD: Yes.

JUDGE SCHLEZINGER: It's a leading question.

Ask him what he was told, what the conversation was.

MR. ROTHFELD: All right.

Q. (By Mr. Rothfeld) What, if anything, was told to you, if anything, with respect to how many businesses --

MR. APPELL: Objection.

Q. (Continuing) -- were present at those premises?

MR. APPELL: Objection.

JUDGE SCHLEZINGER: Could we get, first, his version of what was said?

MR. ROTHFELD: Okay.

If Your Honor pleases, General Counsel has objected, I

247 think my question is proper, and, of course, I think perhaps there ought to be a ruling before I go further.

JUDGE SCHLEZINGER: I have sustained the objection.

MR. ROTHFELD: Yes, Your Honor.

Q. (By Mr. Rothfeld) Briefly, at that meeting, at that first meeting, what did you say, and what did the other

gentlemen say? A. Well, the meeting took place a long time ago.

I discussed with Mr. Al Biele and Tony Biele and the other gentlemen at the meeting, present at the meeting, to the best of my recollection, the advantages of Wickham Electric signing an agreement with Local Union 3.

That we have their men, some of their men, who we feel want to come into Local Union 3. We represent some of their men.

I spoke to them about the advantages of Wickham Electric signing an agreement with Local Union 3.

Q. What did they say? A. Well, they asked many questions as to what advantage would it be for us to come into Local 3.

We're really not ready, at this time, to come into Local 3.

248 I remember we concluded the meeting, I specifically said to them, this is our first meeting.

Part of my job as a business representative is meeting with employers and the men, and trying to -- and have the employer think about coming into our labor organization, and that we'll be meeting you again, and that the door is open for further discussion.

Q. Now, did you, at any time, ask that Mr. Biele or anyone else replace his employees with members of Local Union No. 3? A. No.

We considered the men who were employed by Wickham --

JUDGE SCHLEZINGER: Not what you considered, but what you said.

THE WITNESS: What I said was, that the men who are employed by Wickham, that want to come into 3, we consider them as part of Local Union 3, and I never said to Mr. Biele, and his associates, that they should replace their men with our men.

Q. Did you ever use words, in lieu of, as part of your vocabulary, in those conversations? A. I don't use that type of phraseology.

Q. All right.

When was the next meeting you had with any of these

249 gentlemen? A. July 25th, in a restaurant in the Bronx.

Q. Was that the Villa Manera? A. The Villa Manera Restaurant.

Q. With whom did you meet? A. I met with Mr. Tony Biele.

Q. That's Anthony Biele? A. Anthony Biele, yes.

Q. And it was quite a long meeting? A. I arrived, I think we met approximately 6:30 P.M., and I left 12:30 at night.

Q. About how far were you sitting from Mr. Biele? A. We were sitting together at a table.

I was, I think I was sitting to his left.

Q. Did Mr. Biele drink wine? A. Yes, Mr. Biele had some wine.

Q. About how many bottles? A. Well, during the course of the evening, anywhere between three and four bottles of wine might have been consumed.

Q. By Mr. Biele? A. I would say, about -- I was drinking the wine with Mr. Biele.

250 Q. At this conversation, did -- what did you ask Mr. Biele? A. Well, during the course of the conversation, I told Mr. Biele that I represented the men working for him, a good many of the men working for him, perhaps dozens of men who were employed by Wickham Electric, and that these men told me that they want to come into Local 3, that I represented these men, and that I asked

Mr. Biele if he would consider coming into Local 3, signing an agreement with Local Union 3, being that I represented his men, most of his men.

Q. What did Mr. Biele say?

Withdrawn.

Did Mr. Biele, at that time, mention anything about Ralph Perone as an electrical contractor?

MR. APPELL: Objection. Objection.

JUDGE SCHLEZINGER: This is as part of the same conversation in the restaurant?

MR. ROTHFELD: Same conversation.

JUDGE SCHLEZINGER: I will permit it.

MR. APPELL: Your Honor, the witness' recollection has not been exhausted yet.

JUDGE SCHLEZINGER: You're objecting to the leading nature of the question?

MR. APPELL: Yes.

251 MR. ROTHFELD: I don't think it's leading, Your Honor.

I think it's permissible.

JUDGE SCHLEZINGER: Would you ask him first to relate what he recalls of the conversation?

MR. ROTHFELD: Your Honor, I take it the objection is sustained?

JUDGE SCHLEZINGER: Yes.

MR. ROTHFELD: Respectfully except.

Q. (By Mr. Rothfeld) What, if anything, did Mr. Biele say about the Ralph Perone organization?

MR. APPELL: Objection.

It's in effect, the same question, Your Honor.

JUDGE SCHLEZINGER: Yes, it is.

Have you described that entire conversation, as best you can recall it?

THE WITNESS: No. There was other aspects to the conversation.

MR. ROTHFELD: All right.

Q. (By Mr. Rothfeld) What questions or --

Do you recall Mr. Biele asking you at that meeting?

A. Well, --

Q. Take your time. A. Mr. Biele asked me about his brothers.

252 He says, if I signed a -- an agreement with Local 3, would my brothers be allowed to come into Local 3, and what type of card would they receive.

Q. Would you explain for the record what he -- what the, what type of card referred to? A. Well, they could be a -- an M Helper's Card, an M Journeyman's Card, an M card on the A Rate.

Three types of cards that would be issued.

Q. Depending on the card issued, the pay scale varies?

A. Yes. The pay scale varies from, it starts with an M First Year, M Second Year, M Third Year, M Fourth Year, M Journeyman, M Journeyman on the A Rate.

And Mr. Biele was concerned about his brothers.

He said, if we do come into Local 3, what type of cards would my brother receive.

And then he asked me --

Q. What did you answer?

How did you answer that question? A. I asked him, that whatever -- he, as the Employer of Wickham, would classify, that

they would come into Local 3, we don't classify the people coming into 3, the Employer does, because we don't know who these people are.

253 We have no experience with these people, we don't know if they're electricians or not.

This way, the Employer would classify the man coming in, being that he has to pay him, in the final analysis, so he would be the best judge as to what classification he would want to make them at the time.

Q. And did Mr. Biele ask you about other employees?

A. He asked me how would we classify the rest of my men.

And I proceeded to tell him, the same way, that you would make the classification. You would make the classification as to what type of man would come into Local 3, whether he'd be a man on the M Rate, a man on the A Rate, or an M Helper's Rate.

Q. Did Mr. Biele tell you who was the Employer of record of his brothers, or any of his brothers? A. It was my understanding that I was speaking to the Employer of Wickham Electric.

MR. APPELL: I move to strike what his understanding was.

JUDGE SCHLEZINGER: What was the question?

MR. ROTHFELD: The question was, Mr. Rosenberg, did Mr. Biele tell you who was the Employer of record of his own brothers.

THE WITNESS: He told me he was the President.

254 JUDGE SCHLEZINGER: I'll permit the question.

Go ahead.

MR. APPELL: Move to strike the answer, however, Your Honor, what his understanding was.

THE WITNESS: That was way back.

JUDGE SCHLEZINGER: Tell us, if you will, what was said in the matter, and not what you understood.

THE WITNESS: All right.

That Mr. Biele was the President of Wickham Electric Co.

Q. All right.

Now, did Mr. Biele mention anything to you about a pending lawsuit involving yourself?

MR. APPELL: Objection.

JUDGE SCHLEZINGER: On what ground?

MR. APPELL: Leading.

JUDGE SCHLEZINGER: I take it, you feel you've exhausted the witness' recollection?

MR. ROTHFELD: Well, Your Honor, this is my first question about the lawsuit.

JUDGE SCHLEZINGER: Have you described the conversation now as best you can recall?

THE WITNESS: Well, Your Honor, the lawsuit was part of the conversation.

255 JUDGE SCHLEZINGER: You see, the questions suggest the answers.

Very well, tell us what was said about the lawsuit.

THE WITNESS: During the course of the evening, Mr. Biele's -- Mr. Biele informed me that he was going to institute a lawsuit against Local Union 3, the Board of Education, and myself, and it will probably be instituted two or three days past that meeting, and I said, well, that's too bad. I said, I -- but if -- but that's your prerogative, you're entitled to institute lawsuits.

And he told me he will be starting a lawsuit in a couple of days after our meeting that evening.

Q. And did Mr. Biele connect the prospect of a signing of an agreement with Local 3, with --

MR. APPELL: Objection.

Q. (Continuing) -- with the resolution --

MR. ROTHFELD: May I finish my question?

MR. APPELL: This witness is being led by ever, single question of Counsel, and this witness has never said, I don't recall anything else that has happened, nor is he being asked to confirm or deny something that was testified on General Counsel's case.

Therefore, these questions are totally inappropriate.

256 Counsel has persisted in asking leading questions.

If anything, he's damaging his own record.

MR. ROTHFELD: Your Honor, whether I'm damaging my record, I'm entitled to take that risk.

I respectfully submit, all my questions, including the one I was interrupted in the middle of, were proper.

I respectfully submit I should be permitted to ask my question so that it be on the record, before an objection be made, and before a ruling be made.

JUDGE SCHLEZINGER: Well, you have, I agree with the General Counsel, been asking your own witness leading questions.

The questions have suggested areas of this particular conversation, which he might or might not have recalled of his own accord.

MR. ROTHFELD: If Your Honor pleases, may I ask my question so that the record shows exactly what that question is, before it be objected to, and before a ruling be made?

MR. APPELL: Your Honor, I would never interrupt a question to object, except that it is patently obvious from the beginning of the

question, that it is leading, and if I do not object at that point, the
257 damage is done, because he will then have his suggestive question on the record.

JUDGE SCHLEZINGER: I take it, you do not choose to ask this witness to relate the entire conversation as best he can recall it, before you proceed to refresh his recollection as to certain subjects?

MR. ROTHFELD: Your Honor, they were there for many hours, and I don't want to spend all day with this.

JUDGE SCHLEZINGER: We won't question what they discussed about the wine, just what they discussed that was relevant.

MR. ROTHFELD: Your Honor, please, I'm at a loss, procedurally, at this time.

I was interrupted in the middle of a question, which I believe was proper.

I may be wrong, but I think the question was proper, under all of the circumstances, and was not what the Federal rules would classify as leading.

Now, all I ask is that I be permitted to ask my question, have an objection, and having a ruling.

JUDGE SCHLEZINGER: Very well, you may ask your question. If it is leading, it will, of course, go to the weight of the witness' answer.

MR. ROTHFELD: Of course, Your Honor.

258 Q. (By Mr. Rothfeld) Mr. Rosenberg, was anything said by Mr. Biele in connection with that lawsuit that you described in conjunction with his coming into Local 3 as an electrical contractor?

MR. APPELL: Objection.

JUDGE SCHLEZINGER: Well, I'm going to permit the question.

I also want to comment that I think it is a leading question.

The witness' recollection has not been exhausted, and you are suggesting areas of this conversation, which he has not recalled or indicated he does not recall.

THE WITNESS: Mr. Biele told me that he was going to start a lawsuit within the next two or three days.

During that conversation, a -- I often asked him when do you think he'd be ready to come into Local 3, and he said, it might take him a year or two. He's not ready now to come into Local 3.

And that he's going ahead with his lawsuit.

During the course of conversation, Mr. Biele referred to me -- told me that it might take him a year or two to finalize this lawsuit, and I asked him, I told him, well, if you signed an agreement with Local 3 and you came into Local 3, how long would it take you to
259 realize these profits, because we recognize you as, you know, an outstanding contractor, who's doing work in the City of New York.

And he said, well, it might take me a year or two to realize these profits at the rate I'm going. If I, you know, had an agreement with Local 3.

On the other hand, he said to me that I'm still going ahead with this lawsuit, and at a future date, perhaps I'll consider coming into Local 3.

Q. Okay.

Now, at any time during that conversation, did you ask Mr. Biele to replace his employees with other employees, with other electricians, who were members of Local Union No. 3? A. No, I never did.

We had Wickham's men out on strike, and we considered their men our men, and what we wanted is for Mr. Biele to sign an agreement

with Local Union 3, and then the men who were out on strike would then go back to work for Wickham Electric.

At no time did I say to him that we'll take away his men and give him our men.

Q. All right.

Now, sir, you know what an Excelsior list is? A. Yes, I do.

Q. What is your understanding of an Excelsior List?

260 A. Prior to an election, the National Labor Relations Board Election, the Employers who we are petitioning for an election, has to supply a list of names to the Union who is filing for the election.

Q. All right.

When were you first apprised of the Excelsior List submitted by Wickham, in connection with the election scheduled for September 19th, 1974, in Region 2, covering the United Construction Contractors Association? A. Oh, that list came out sometime during the -- during the summer, just before the election.

And then I was amazed, when I looked at the list --

MR. APPELL: I move to strike, "I was amazed."

THE WITNESS: All right, strike that.

MR. ROTHFELD: Wait, hold on.

JUDGE SCHLEZINGER: His amazement will be sticken.

THE WITNESS: Okay.

I looked at the list, and I noticed the employees of Wickham Electric on the list, and it did not include all the names of the people that we had out on strike.

Q. Now, after you looked at the list, did you have the matter investigated? A. Yes.

After I looked at the list, I found that there was a Wickham

261 Electric, and a Wickham-Perone Electric, and that the men

that we had out on strike, who were employed by Wickham, their names did not appear on the list, because, after investigation, we found that they were also employed by Wickham-Perone, and Wickham-Perone is not a -- an Association Employer.

So that there was no Excelsior List for Wickham-Perone, just for Wickham.

Q. All right.

Then in -- shortly after the election, did you instruct that a picket line be placed in front of the premises of Wickham or Wickham-Perone, or Perone, at -- in Pelham? A. Yes, I did.

Q. What did you instruct that the signs say? A. I instructed that the signs say that, regular picket signs, Wickham -- employees of Wickham-Perone are out on strike.

We have various signs.

Some of the signs indicate that the Employer, Wickham-Perone, does not pay fair wages.

There's many different types of signs that we use in our various picketing duties.

Q. Okay.

I show you Respondent's Exhibit 3.

262 Was that one of the signs? A. Yes. Yes. That's one of the signs.

Q. I show you Respondent's 1.

Is that another one of those signs? A. Yes. Those are other signs that we have.

We have many types of signs, Your Honor.

Q. Now, -- A. Some are printed commercially, and some we print by hand.

Q. All right.

Now, are those the same signs that you instructed to be used in front of the Downstate Medical Center and the Kings County Hospital? A. Yes.

I instructed the people to use the Local 3 Picket signs and use Wickham-Perone as the Employer, because we found out that it's Wickham-Perone. Not Wickham.

Because their name -- Because, as I said before, when we checked the Excelsior List, that people that we had out on strike, their names were not listed on the Wickham Excelsior List.

Some of them, not all of them. Some of them.

MR. ROTHFELD: Your witness.

JUDGE SCHLEZINGER: Cross examine.

CROSS EXAMINATION

263 Q. (By Mr. Appell) Mr. Rosenberg, you say you did see picketing with the language that's on Respondent's Exhibit 3, correct? A. I saw signs, yes, similar to this type of language.

Q. Yes.

You also saw signs that simply said, Wickham Electric on strike, did you not? A. Going back, Counselor, we originally thought that it was only Wickham Electric.

Q. When was such signs used, which said, Wickham Electric, rather than Wickham-Perone? A. Oh, well, I don't remember if we ever had any Wickham signs.

Just a plain Wickham sign that was made.

Q. Didn't you just testify there was such a sign at the beginning? A. I'm trying to, you know, remember.

We're going back a year, a year and a half.

Q. Okay.

Well? A. No, to my knowledge, the signs we had always used to say, Wickham-Perone, and still do say, Wickham-Perone,

because that's when we started to picket Wickham-Perone, and we
264 found out -- you know, after we had the people out on strike.

Q. Well, Wickham-Perone, as an entity, was not a member of the Assocation.

You knew that, didn't you? A. I really didn't know the relationship between Wickham and Perone.

The Excelsior List only had Wickham Electric.

Q. That's right. A. It did not have Wickham-Perone.

Q. And, in the Board decision, you knew only Wickham Contracting was mentioned, isn't that correct? A. The Board decision --

Say that again.

An Association contractor?

Q. The Board decision that directed an election, you knew that it only had the name of Wickham and not Wickham-Perone? A. Which election was that?

Q. The one that was just held in September. A. The Association election?

Q. Yes. A. Yes.

Wickham was part of that election.

Q. It did not say, Wickham-Perone, isn't that correct?
265 A. It did not say that.

Q. You knew that at the time, didn't you? A. I knew that.

Q. When you talked to the Bieles in the spring of 1974, you knew that Wickham was a member of this Association, didn't you? A. Yes.

Q. And, of course, you knew it also to be a fact, when you spoke to Anthony Biele on July 25th, isn't that correct? A. Yes.

That Wickham was a member of the Association.

Q. When you talked to him about reaching an agreement with you on July 25th, you did not mention anything that the Association should bargain for him, did you? A. That the Association should bargain?

Q. Yes. A. No, I did not.

Q. You asked him to sign an individual contract with Local 3, isn't that correct? A. I asked him to sign a contract with Local 3, yes.

* * * * *

270 REDIRECT EXAMINATION

Q. (By Mr. Rothfeld) Mr. Rosenberg, you have -- about how many --

Withdrawn.

Have you spoken with a large number of electricians who worked for Wickham and/or Wickham-Perone? A. Yes.

Q. From your conversations, did you learn of any distinctions -- A. Yes, sir.

Q. (Continuing) -- between the Wickham operation and the Perone operation, or the Wickham-Perone operation? A. Yes.

Q. What are they, if any? A. Yes.

What I found out, Counselor, was that, when these men, these
271 electrical workers were employed on City jobs, and where a license was needed, they would be employed by Wickham-Perone.

When they were working on jobs where no license was needed, they would be employed by Wickham, and during the course of their employment, they were working, actually, for both of these Employers, Wickham on City jobs, and when they had to work on State or Federal jobs -- Wickham-Perone on City jobs; and State and Federal jobs, they ended up working for Wickham, where a license was not needed.

Q. Did you, at any time, see any evidence of two separate businesses being conducted at the Pelham site, or anywhere else? A. I was at the Pelham site only once, and I -- when I was there, I had the understanding that it was a Wickham - - Wickham was the Employer there. Was the Employer.

Q. Did any of the employees tell you that there were two separate businesses being conducted at the site?

MR. APPELL: Objection.

JUDGE SCHLEZINGER: On what ground?

MR. APPELL: Leading.

It's beyond the scope of cross examination.

And it's irrelevant.

272 JUDGE SCHLEZINGER: I'll permit the question.

Q. Answer, please. A. No.

They always -- They always thought they were working for one Employer.

MR. ROTHFELD: That's all.

JUDGE SCHLEZINGER: Any recross?

MR. APPELL: None, Your Honor, thank you.

JUDGE SCHLEZINGER: The witness is excused.

* * * * *

274 Q. * * * Did you receive any notice of termination from Wickham Contracting Co., Inc.? A. No.

Q. Did you quit Wickham Contracting Co., Inc.? A. No.

Q. Did Mr. Vecchio tell you that you were leaving the employ of Wickham Contracting Co., Inc.? A. No.

Q. Did he tell you you were becoming employed by another employer? A. No.

Q. Okay.

* * * * *

278 MR. ROTHFELD: Will the General Counsel stipulate that during the summer of 1974, on a number of occasions, Mr. Rossetti received paystubs from both Ralph Perone and Wickham, in a number of instances, for the -- during the same weeks, and for the periods ending the same day?

279 MR. APPELL: I will stipulate to those facts, Your Honor, but I would object to their relevancy.

* * * * *

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Respondent.

Case Nos. 75-4235 & 75-4269

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 29th day of April, 1976.

ELLIOTT MOORE
Deputy Associate General Counsel.
National Labor Relations Board.
Washington, D.C. 20570

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